



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2016

Ms. Stacie S. White
Counsel to the Town of Flower Mound
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-26024

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 635291.

The Town of Flower Mound (the "town") received a request for all police records for five named individuals and a specified address. You state you will withhold some information pursuant to Open Records Decision No. 684 (2009) and sections 552.130 and 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request, in part, requires the town to compile unspecified law enforcement records concerning the named individuals. Accordingly, we find the request implicates the named individuals' right to privacy. Therefore, to the extent the town maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the town generally must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information in which none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individuals' criminal histories, and it may not be withheld under section 552.101 of the Government Code on that basis.

We note the requestor is representative of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114(a) of the Government Code states, in pertinent part,

(2) The [DFPS] shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3)[.]

Gov't Code § 411.114(a)(2)(I), (4)(B). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, the requested information may contain CHRI, and this requestor has a right of access under section 411.114 to CHRI in information held by the department if it involves an alleged perpetrator in a report of child abuse or neglect.

In this instance, the requestor does not state the named individuals are the alleged perpetrators in a report of abuse or neglect of a child, but only requests information about the named individuals. Therefore, if the named individuals are alleged perpetrators in a report of abuse or neglect of a child that was reported to DFPS, the town must release the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from any responsive information, to the extent it exists, depicting any of the named individuals as a suspect, arrestee, or criminal defendant. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth. 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). To the extent it exists, the town must withhold any remaining information depicting any of the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the named individuals are not alleged perpetrators in a report of abuse or neglect of a child that was reported to DFPS, then, to the extent the town maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the town must withhold any such information in its entirety under section 552.101 in conjunction with common-law privacy.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale

in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we conclude the information we have marked in the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the named individuals are alleged perpetrators in a report of abuse or neglect of a child that was reported to DFPS, the town must release the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from any responsive information, to the extent it exists, depicting any of the named individuals as a suspect, arrestee, or criminal defendant. To the extent it exists, the town must withhold any remaining information depicting any of the named individuals as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the named individuals are not alleged perpetrators in a report of abuse or neglect of a child that was reported to DFPS, then, to the extent the town maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the town must withhold any such information in its entirety under section 552.101 in conjunction with common-law privacy. The town must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The town must release the remaining information.

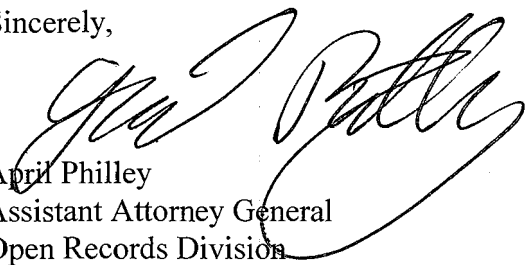
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

²Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

[orl_ruling_info.shtml](#), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 635291

Enc. Submitted documents

c: Requestor
(w/o enclosures)