



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 2, 2016

Mr. John A. Haislet  
Senior Assistant City Attorney  
Legal Department  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2016-26697

Dear Mr. Haislet:

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# 636062 (File No. A16-003128).

The College Station Police Department (the "department") received a request for information pertaining to four named individuals. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "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 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 demonstrated. *See id.* at 681-82. A compilation of an individual's criminal history record information 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.

The request seeks unspecified records pertaining to the named individuals. Thus, we find the request requires the department to compile the named individuals' criminal histories. However, we note the requestor is acting as the authorized representative of the named individuals. Thus, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to the named individuals that would otherwise be withheld to protect their privacy in a compilation of their criminal histories. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); *see* Open Records Decision No. 481 at 4 (1987). Accordingly, the department may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F or subchapter E-1 of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon our review, we conclude the

department must generally withhold the CHRI we marked under section 552.101 in conjunction with section 411.083 and federal law.

However, we note the requestor states she is conducting a court-ordered social study. Accordingly, the requestor may have a right of access to the CHRI at issue pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides, in part, that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the DPS CHRI that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”<sup>1</sup> *See id.* § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). As previously noted, the submitted information contains CHRI. However, a domestic relations office may only receive CHRI if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, the department office may not withhold this information from her under section 552.101 of the Government Code in conjunction with section 411.083. However, if the department determines the requestor does not represent a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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<sup>1</sup>A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You state Exhibit 2 pertains to cases where no criminal charges were filed. You also state Exhibit 2 pertains to cases that concluded in results other than convictions or deferred adjudications. Based on your representations, we find section 552.108(a)(2) is applicable to Exhibit 2.

However, as you acknowledge, section 552.108(a)(2) does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibit 2 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.* 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.<sup>3</sup> *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. With the exception of the dates of birth of the named individuals, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4.

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<sup>2</sup>As Exhibit 2 does not contain any CHRI that relates to any person who is the subject of the social study, we need not discuss the applicability of section 411.1285 to this information. Additionally, as our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

<sup>3</sup>Section 552.102(a) excepts 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).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>4</sup> Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines the requestor represents a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, the department may not withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083. However, if the department determines the requestor does not represent a domestic relations office created under chapter 203 of the Family Code that is providing services to a person who is a party to a proceeding under chapter 203 of the Family Code, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of basic information, the department may withhold Exhibit 2 under section 552.108(a)(2) of the Government Code. With the exception of the dates of birth of the named individuals, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>5</sup>

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/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/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

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>We note the information being released contains social security numbers. 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* Gov't Code § 552.147(b). However, the requestor has a right of access to the named individuals social security numbers. *See id.* § 552.023(a); ORD 481 at 4. We also note the requestor has a special right of access to some of the information being released in this instance. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 636062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)