



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2017

Ms. Jennifer Gonzales
Assistant Criminal District Attorney
Hays County District Attorney's Office
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2017-00856

Dear Ms. Gonzales:

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# 647890 (Ref. No. 16-1000).

The Hays County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to several named individuals. The district attorney's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 satisfied. *Id.* at 681-82. This office has found 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in

courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

Upon review, we find the present request, in part, requires the district attorney's office to compile unspecified law enforcement records concerning the named individuals. We find this part of the request generally implicates the named individuals' rights to privacy. Accordingly, to the extent the district attorney's office maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold such information under section 552.101 in conjunction with common-law privacy. We note, however, the district attorney's office has submitted a report which does not list the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the named individuals. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy as a criminal history compilation. Accordingly we will address the district attorney's office's remaining arguments against disclosure of this information.

As noted above, common-law privacy 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. Upon review, we find the information at issue contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

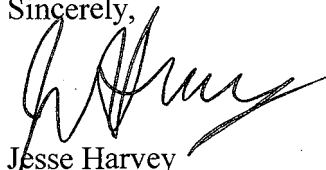
In summary, to the extent the district attorney's office maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the district attorney's office must withhold such information under section 552.101 in conjunction with common-law privacy. The district attorney's office must withhold the marked report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure of this 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/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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 647890

Enc. Submitted documents

c: Requestor
(w/o enclosures)