



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 24, 2017

Ms. Lori J. Kaspar  
County Attorney  
Hood County  
1200 West Pearl Street  
Granbury, Texas 76048

OR2017-01610

Dear Ms. Kaspar:

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# 642587.

The Hood County Sheriff's Office (the "sheriff's office") received a request for all call sheets and reports involving a named individual within a specified range of dates. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have also received and considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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

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<sup>1</sup>We note that the submitted information 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 from public release without the necessity of requesting a decision from this office under the Act.

<sup>2</sup>We note the sheriff's office failed to comply with the procedural requirements of section 552.301(b) of the Government Code by failing to meet its 10-business-day deadline. *See* Gov't Code § 552.301(b) (requiring a governmental body to ask for the attorney general's decision and to state the exceptions that apply within ten business days of receiving the written request). Nonetheless, the applicability of sections 552.101 and 552.130 of the Government Code can constitute compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the sheriff's office's assertions under these exceptions.

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. *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. 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. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

In this instance, however, you state and provide documentation showing, the requestor holds a durable general power of attorney for the named individual. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the requestor has a right of access to information pertaining to the named individual that would otherwise be withheld under common-law privacy. Therefore, this information may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the named individual's private information, the sheriff's office must withhold the dates of birth of members of the public under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions

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<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).

independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

After review of the remaining information, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304.

We understand Hood County is part of an emergency communication district subject to section 772.318 of the Health and Safety Code. You assert the telephone numbers and addresses of 9-1-1 callers you have marked are confidential under section 772.318. Upon review, we conclude that, to the extent the information at issue is information furnished by a 9-1-1 service supplier and consists of the originating telephone numbers and addresses of 9-1-1 callers, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the sheriff's office may not withhold this information under section 552.101 on the basis of section 772.318 of the Health and Safety Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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. *See* Gov't Code § 552.130(a). Portions of the remaining information contain information subject to section 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to motor vehicle record information of the named individual pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, the sheriff's office must withhold the motor

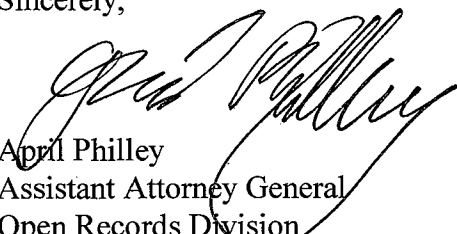
vehicle record information that does not belong to the named individual, of which we have marked a representative sample, under section 552.130 of the Government Code.

In summary, the department must withhold the dates of birth of public citizens, with the exception of the date of birth of the named individual, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information the sheriff's office marked is information furnished by a 9-1-1 service supplier and consists of the originating telephone numbers and addresses of 9-1-1 callers, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the sheriff's office may not withhold this information under section 552.101 on the basis of section 772.318 of the Health and Safety Code. With the exception of the named individual's motor vehicle record information, the sheriff's office must withhold the motor vehicle record information in the remaining information, of which we have marked a representative sample, under section 552.130 of the Government Code. The remaining information must be released.

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 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/sdk

Ref: ID# 642587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)