



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 17, 2017

Mr. Thomas Gilliland  
Public Information Officer  
Harris County Sheriff's Office  
1200 Baker Street, 2<sup>nd</sup> Floor  
Houston, Texas 77002

OR2017-05566

Dear Mr. Gilliland:

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# 649386 (HCSO Ref. No. P006650-121516).

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. The sheriff's office released information responsive to the request but made redactions as permitted by section 552.130 of the Government Code without requesting a decision from this office. *See* Gov't Code § 552.130(c). Pursuant to section 552.130(d), the requestor has asked this office to review the information and render a decision as to whether it is excepted from disclosure under section 552.130(a) of the Government Code. *See id.* § 552.130(c)–(e). We have considered the position of the sheriff's office and reviewed the information.

We understand the sheriff's office redacted dates of birth pursuant to section 552.101 of the Government Code. You do not state, nor does a review of our records indicate, the sheriff's office is authorized to withhold that information without seeking a ruling from this office. *See id.* § 552.301; Open Records Decision No. 673 (2001). Accordingly, the sheriff's office was required to seek a ruling to withhold that information, and it did not meet the procedural deadlines under section 552.301(b) of the Government Code in asking this office for a ruling on that information. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to withhold that information from disclosure, we will consider the applicability of this exception to the information at issue. *See id.* § 552.302.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

Additionally, 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>1</sup> *Texas 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. We note a requestor has a right of access to his own date of birth. *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).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the requestor’s date of birth, the sheriff’s office must continue to withhold the dates of birth it previously withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must also withhold the additional information we

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<sup>1</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).

have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

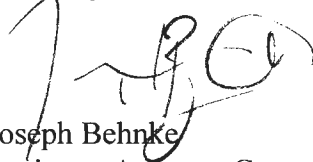
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a). We note section 552.130 is intended to protect individual privacy interests, so the requestor has a right of access to his own information. *See id.* § 552.023(b); ORD 481. Accordingly, the sheriff's office may not withhold any of the motor vehicle record information pertaining to the requestor. *See Gov't Code* § 552.130(d) (providing in part, "attorney general shall promptly render a decision . . . determining whether the redacted or withheld information *was* excepted from required disclosure to the requestor") (emphasis added). However, we find the sheriff's office must continue to withhold the remaining motor vehicle record information you previously withheld under section 552.130 of the Government Code.

In summary, with the exception of the requestor's date of birth, which must be released, the sheriff's office must continue to withhold the dates of birth you previously withheld, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's motor vehicle record information, which must be released, the sheriff's office must continue to withhold the motor vehicle record information you previously withheld under section 552.130 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "J. Behnke", written over a printed name.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 649386

Enc. Submitted documents

c: Requestor  
(w/o enclosures)