



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Ms. Agatha Wade
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205-3030

OR2017-11603

Dear Ms. Wade:

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# 659521 (BCCDA File No. 5658).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to the requestor's client for a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find Exhibit C constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information you marked and additional information we marked which is subject to section 773.091(g), the district attorney’s office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The doctrine of common-law privacy protects a compilation of an individual’s criminal history, which 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 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. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a right of access to his client’s date of birth pursuant to section 552.023 of the Government Code, and the district attorney’s office may not withhold that information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, with the exception of the requestor’s client’s date of birth, which we

marked for release, we find the district attorney's office must withhold the dates of birth you marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district attorney's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the district attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in part the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b)(3). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information in Exhibit E was prepared by the district attorney's office in anticipation of litigation or reflects the mental impressions and legal reasoning of attorneys representing the state. Upon review, we agree the information at issue reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude the information at issue is subject to section 552.108(b)(3) of the Government Code. Thus, the district attorney's office may withhold the information in Exhibit E under section 552.108(b)(3) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information

confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). We have marked information of a peace officer that is not held in an employment capacity by the district attorney’s office. To the extent the peace officer elects to restrict access to the information we marked in accordance with section 552.1175(b), the district attorney’s office must withhold the information we marked under section 552.1175 of the Government Code; however, the district attorney’s office may withhold the cellular telephone number we marked only if the cellular telephone service is not paid for by a governmental body. To the extent the peace officer whose information is at issue does not elect to restrict access to the marked information in accordance with section 552.1175(b), the district attorney’s office may not withhold the marked information under section 552.1175 of the Government 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Upon review, with the exception of the requestor’s client’s motor vehicle record information, which we marked for release, we find the district attorney’s office must withhold the remaining motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). We note the requestor has a right of access to his client’s social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Therefore, with the exception of the requestor’s client’s social security number, the district attorney’s office may withhold the remaining social security numbers in the submitted information under section 552.147(a) of the Government Code.

In summary, the district attorney’s office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for the information you marked and the additional information we marked which is

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

subject to section 773.091(g). With the exception of the requestor's client's date of birth, which we marked for release, we find the district attorney's office must withhold the dates of birth you marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office may withhold the information in Exhibit E under section 552.108(b)(3) of the Government Code. To the extent the peace officer elects to restrict access to the information we marked in accordance with section 552.1175(b), the district attorney's office must withhold the information we marked under section 552.1175 of the Government Code; however, the district attorney's office may withhold the cellular telephone number we marked only if the cellular telephone service is not paid for by a governmental body. With the exception of the requestor's client's motor vehicle record information, which we marked for release, the city must withhold the remaining motor vehicle record information you marked under section 552.130 of the Government Code. With the exception of the requestor's client's social security number, the district attorney's office may withhold the remaining social security numbers under section 552.147 of the Government Code. The remaining information must be released.²

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

²We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023; see also ORD 481 at 4. Thus, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.

Ref: ID# 659521

Enc. Submitted documents

c: Requestor
(w/o enclosures)