



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21 2017

Mr. Nicholas Toulet
Assistant City Attorney
Midland City Attorney's Office
P.O. Box 1152
Midland, Texas 79702-1152

OR2017-13741

Dear Mr. Toulet:

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# 662931.

The Midland Police Department (the "department") received a request for all records pertaining to a named individual where the named individual is identified as a suspect or arrested person. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we understand the requestor to assert she has a right of access to the requested information under section 32-1664(A) of Arizona's Revised Statutes. This section authorizes the Arizona State Board of Nursing to obtain any information that "indicates that a person or regulated party may have violated [chapter 15 of title 32 of the Arizona Revised Statutes ("this chapter")] or a rule adopted pursuant to this chapter[.]" See A.R.S. § 32-1664(A). The Act generally does not incorporate the confidentiality or access provisions of other states' statutes, regulations, and judicial rules because those authorities only govern the disclosure of information held by those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its

information with Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). The requested information is maintained by the department, which is subject to the state laws of Texas. Thus, although section 32-1664 authorizes the requestor to obtain any information that “indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter,” this statute does not grant the requestor access to records of a Texas governmental body that are excepted from disclosure under the Act. Accordingly, we will address the department’s arguments against disclosure of the requested 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. This section 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. 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. 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 present request seeks unspecified law enforcement records pertaining to a named individual. This request requires the department to compile the named individual’s criminal history and implicates the privacy of the named individual. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive style with a large, looped initial "A".

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 662931

Enc. Submitted documents

c: Requestor
(w/o enclosures)