



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 6, 2017

Mr. Mark C. Kratovil  
Assistant Criminal District Attorney  
Office of the Criminal District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2017-22849

Dear Mr. Kratovil:

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# 679358.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received two requests from different requestors: the first was for information pertaining to detainees transferred into the United States Immigration and Customs Enforcement ("ICE") custody from Tarrant County Jail for a specified period of time (the "first request"); and the second was for "[c]omplete records for everyone booked into Tarrant County jail" and a list of all fields relating to the jail booking database for a specified period of time (the "second request"). The district attorney's office claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 section 236.6 of title 8 of the Code of

Federal Regulations,<sup>1</sup> which protects information regarding detainees held on behalf of the United States Department of Homeland Security (“DHS”).<sup>2</sup> This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or [ICE], as appropriate in the context in which the term appears”). The submitted information consists of spreadsheets of data pertaining to inmates of the Tarrant County Jail. The district attorney’s office informs us some of this information “reflects when inmates in Tarrant County Jail are subject to holds from federal agencies and other jurisdictions.” We note the first request asks only for information pertaining to detainees transferred into ICE custody; however, the second request is not specifically for information pertaining to ICE detainees. The district attorney’s office is required to abide by rules promulgated by DHS with regard to the detainees. *See id.* § 2.1 (Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government’s exclusive and expressed interest in regulating aliens). The district attorney’s office does not provide our office with any applicable federal law, regulation, or executive order that provides either requestor with a right of access to the information at issue. Therefore, the information responsive to the first request, which the

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<sup>1</sup>Section 552.101 encompasses information that other statutes make confidential. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

<sup>2</sup>We note the functions of the Immigration and Naturalization Service (“INS”) were transferred to the DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

district attorney's office has submitted as Exhibit C-1, is made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the district attorney's office must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations.<sup>3</sup> See 8 U.S.C. § 1103(a)(3) (Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization); *ACLU*, 799 A.2d at 655 (because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); see also *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). To the extent the information in Exhibit C-2 identifies an ICE detainee, the district attorney's office must also withhold such information under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. To the extent the information in Exhibit C-2 does not identify an ICE detainee, the district attorney's office may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing fact, the publication of which would be highly objectionable to a reasonable person, and (2) 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 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 district attorney's office argues Exhibit C-2 is confidential as a compilation of criminal history. However, the second request does not ask for information pertaining to any specific individual. Therefore, the district attorney's office may not withhold the information in Exhibit C-2 under section 552.101 in conjunction with common-law privacy on that basis.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

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<sup>3</sup>As our ruling is dispositive, we do not address the remaining argument against disclosure of this information.

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the information in Exhibit C-2 was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information, which we have indicated, is within the scope of section 261.201 of the Family Code. The district attorney’s office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, to the extent the information in Exhibit C-2 does not identify an ICE detainee, the district attorney’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

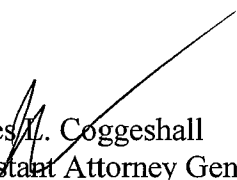
To conclude, the district attorney’s office must withhold Exhibit C-1 in its entirety and any information in Exhibit C-2 that identifies an ICE detainee under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. To the extent the information in Exhibit C-2 does not identify an ICE detainee, the district attorney’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and must release any remaining 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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sb

Ref: ID# 679358

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)