



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2018

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-00076

Dear Ms. Ayala:

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# 689712 (OGC# 177706).

The University of Texas at Tyler (the "university") received a request for the university police department files of fourteen named individuals. You state the university does not possess some of the requested information.¹ You state you will withhold certain information pursuant to sections 552.130(c) and 552.136(c) of the Government Code and Open Records Letter No. 2016-04325 (2016).² You claim portions of the submitted information are

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Letter No. 2016-04325 authorizes the university to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. 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 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. 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.

The present request requires the university to compile unspecified law enforcement records concerning the individuals named in the request, and thus, implicates each named individual’s right to privacy. Therefore, to the extent the university maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the university must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not list any of the named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of criminal history, and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Texas Department of Public Safety (“DPS”) concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). The submitted information contains concealed handgun license information obtained from DPS. In this instance, the requestor is neither a license holder nor a criminal justice agency. Thus, the university must withhold the concealed handgun license information you have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. This office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense is confidential under common-law privacy. Open Records Decision No. 393 at 2 (1983); see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the university must withhold the information you have marked and the additional information we have marked to withhold under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Consequently, the university may not withhold the remaining information under section 552.101 on that basis.

In summary, to the extent the university maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the university must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the concealed handgun license information you have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. With the exception of the information we have marked for release, the university must withhold the information you have marked and the additional information we have marked to withhold under section 552.101 of the

Government Code in conjunction with common-law privacy. The university must release the 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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 689712

Enc. Submitted documents

c: Requestor
(w/o enclosures)