



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 23, 2018

Ms. Sue Jana  
Assistant Criminal District Attorney  
Bexar County Criminal District Attorney's Office  
101 West Nueva Street, 7<sup>th</sup> Floor  
San Antonio, Texas 78205

OR2018-04302

Dear Ms. Jana:

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# 696839 (DA File No. 6145).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for any criminal cases involving a named individual during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's claim the district attorney's office failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, the requestor states, and the submitted information confirms, request at issue was sent to the district attorney's office on November 22, 2017. However, you state the district attorney's office operated on a skeleton crew on November 22, 2017, and the district attorney's office was closed on November 23, 2017, and November 24, 2017. We note this office does not count the date the request was received

or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the district attorney's office is considered to have received the request for information on November 27, 2017. Accordingly, the district attorney's office's ten-business-day deadline was December 11, 2017. The envelope containing the information required by section 552.301(b) is meter marked December 11, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district attorney's office complied with the requirements of section 552.301 in requesting this decision from our office.

Section 552.101 of the Government Code excepts from disclosure "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 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 district attorney's office to compile unspecified law enforcement records concerning the individual named in the request, and thus, implicates this individual's right to privacy. Therefore, to the extent the district attorney's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the district attorney's office 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](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 "Tim Neal". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 696839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)