



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-03045

Dear Ms. Tynan:

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# 749643 (OGC# 186089).

The University of Texas at Arlington (the "university") received a request for all police reports pertaining to a named individual during a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have also received and considered comments from the requestor *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions 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. This section encompasses the doctrine of common-law privacy, which protects information if (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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.

In this instance, the requestor seeks, in part, unspecified law enforcement records relating to the named individual. Thus, this part of the request requires the university to compile the named individual's criminal history and thereby implicates his privacy interest. We note, however, because the common-law right to privacy is a personal right that lapses at death, the university may not withhold any compiled criminal history information that relates to a deceased individual based upon common-law privacy. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). We note the named individual is deceased; thus, the university may not withhold any of the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

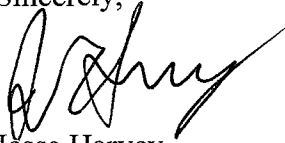
As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has also concluded information that identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983). Additionally, this office has found common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.008(b). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no legitimate public concern. Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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, appearing to read "Jesse Harvey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/mo

Ref: ID# 749643

Enc. Submitted documents

c: Requestor
(w/o enclosures)