



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2019-05070

Dear Mr. Anderson:

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# 751496 (ORR# 18PIA598).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. The sheriff's office claims the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The submitted information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although the sheriff's office asserts some of the information that is subject to section 552.022(a)(17), which we have marked, is confidential under common-law privacy, common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold the information subject to section 552.022(a)(17) under common-law privacy. However, section 552.130 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of section 552.130 to the information at issue.

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 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The requestor has a right of access to the dates of birth pertaining to herself, her spouse, and her juvenile child pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nevertheless, with the exception of the date of birth located in the information we have marked under section 552.022(a)(17) of the Government Code, we find the offender's date of birth and some of the remaining information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must generally withhold the offender's date of birth and the information we have marked under section 552.101 of the Government Code in confidential under common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Section 552.130 protects personal privacy. The requestor has a right of access to some of the submitted motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the sheriff's office must generally withhold the offender's motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

Nonetheless, the requestor may be an authorized representative of the offender. As noted in part above, section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor is an authorized representative of the offender, then the requestor has a right of access to the offender's private information pursuant to section 552.023 of the Government Code, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.130 of the Government Code.

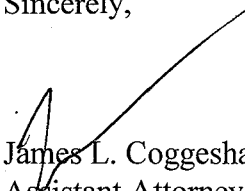
In summary, if the requestor is not an authorized representative of the offender at issue in the submitted report, then, with the exception of the information we have marked under section 552.022(a)(17) of the Government Code, the sheriff's office must withhold the offender's date of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code, but must release the remaining information. However, if the requestor is an authorized representative of the offender, then the sheriff's office must release the submitted information in its entirety to the requestor. Because the requestor has a special right of access to the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Fam. Code § 261.201(k).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 751496

Enc. Submitted documents

c: Requestor
(w/o enclosures)