KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2019-05699

Dear Ms. Sheely:

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# 752842.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all records related to a named individual during a specified time period. The sheriff's office states it is releasing some of the requested information. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted representative sample of information.[1]

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 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

[1]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

satisfied. *Id.* at 681-82. This office has found 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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

The present request seeks all reports pertaining to a named individual. This request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the sheriff's office has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states report numbers 16-639, 16-9212, and 17-7814 relate to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to report numbers 16-639, 16-9212, and 17-7814.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold report numbers 16-639, 16-9212, and 17-7814 under section 552.108(a)(2) of the Government Code.

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to sections 552.130 and 552.137 of the Government Code.[2] Section 552.130 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. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must

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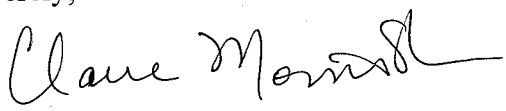
[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the sheriff's office may withhold report numbers 16-639, 16-9212, and 17-7814 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff's office 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 752842

Enc. Submitted documents

c: Requestor
(w/o enclosures)