



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 18, 2019

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2019-07477

Dear Ms. Lentz:

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# 754877.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information related to a specified incident involving a named individual. The second requestor additionally seeks all reports pertaining to the named individual during a specified time period. The sheriff's office states it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).<sup>1</sup> The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document, which we marked. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code

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<sup>1</sup>Open Records Letter No. 2016-21706 authorized the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

§ 552.022(a)(17). We note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold information contained in the court-filed document under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address the sheriff's office's arguments against disclosure of the remaining information.

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 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.

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

We note the sheriff's office has submitted documents relating to the incident specified by the requestors, as well as information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part 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 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The sheriff's office argues some of the information at issue is subject to chapter 261 of the Family Code because the incident at issue was reported to the Child Protective Services Division of the Department of Family and Protective Services. Upon review, we find the sheriff's office has not demonstrated the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the sheriff's office has not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). Therefore, the sheriff's office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Some of the information at issue is protected under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, each requestor knows both the identity of the individual involved and the nature of the incident at issue in event number 2018-338447. Therefore, withholding only the individual's identity or certain details of the incident from the requestors would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold event number 2018-338447 in its

entirety from both requestors under section 552.101 of the Government Code in conjunction with common-law privacy.

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 2017-04-00410 and 2017-02-00945 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 2017-04-00410 and 2017-02-00945.

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 2017-04-00410 and 2017-02-00945 under section 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Some of the remaining information, which the sheriff's office has marked, relates to an individual who was licensed as a peace officer but the information is not held by the sheriff's office in an employment context. Upon review, we find a portion of the information does not consist of the type of information that is protected by section 552.1175 and this information, which we marked for release, may not be withheld on that basis. Thus, if the peace officer at issue elects to restrict access to the information in accordance with section 552.1175(b), then with the exception of the information we marked for release, sheriff's office must withhold the information it marked under section 552.1175 of the Government Code. Conversely, if the individual does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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. Accordingly, the sheriff's office must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

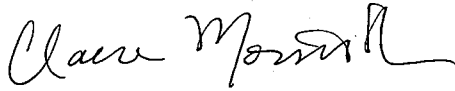
In summary, to the extent the sheriff's office maintains unspecified law enforcement records, other than information pertaining to the specified incident, listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold event number 2018-338447 in its entirety from both requestors 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 2017-04-00410 and 2017-02-00945 under section 552.108(a)(2) of the Government Code. If the peace officer at issue elects to restrict access to the information in accordance with section 552.1175(b), then with the exception of the information we marked for release, sheriff's office must withhold the information it marked under section 552.1175 of the Government Code. The sheriff's office must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information to the second requestor.

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/>

[url\\_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 "Claire V. Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

Ref: ID# 754877

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)