



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Ms. Annette Vargas
Records Clerk
Milam County Sheriff's Office
512 North Jefferson, Suite A
Cameron, Texas 76520

OR2019-10187

Dear Ms. Vargas:

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# 759713 (ORR# 166).

The Milam County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual. The sheriff's office claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. 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. 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. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information).

Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestor asks for all information held by the sheriff's office concerning a named individual. Therefore, to the extent the sheriff's office maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

We note the requestor is a representative of the Regional Public Defender For Capital Cases (the "public defender's office"). Section 411.1272 of the Government Code provides as follows:

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by[DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Accordingly, the requestor is authorized to obtain the CHRI at issue from the sheriff's office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed. *See id.* §§ 411.1272, .087(a)(2). A statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law

only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, if the sheriff's office determines the requested information, to the extent it exists, relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the sheriff's office must release the CHRI. If the sheriff's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the sheriff's office is not required to release CHRI, to the extent it exists, on that ground.

Section 552.101 of the Government Code also encompasses section 58.008(b) of the Family Code, which provides as follows:

Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* §§ 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Upon review, we find some of the information at issue, which we have marked under section 58.008(b), involves a juvenile offender, so as to fall within the scope of that section. The exceptions in section 58.008 do not appear to apply. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, the remaining information is not

confidential under section 58.008(b), and the sheriff's office may not withhold it under section 552.101 on that ground.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. 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.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov't Code* § 552.1175. Some of the remaining information pertains to individuals who may be subject to section 552.1175. *See id.* § 552.1175(a)(10). Thus, the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code if it pertains to individuals who are subject to section 552.1175(a) of the Government Code and they elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, if these individuals are not subject to section 552.1175(a) or do not elect to restrict access to this information in accordance with section 552.1175(b), then the sheriff's office may not withhold this information under section 552.1175.²

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 id.* § 552.130. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains any unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant,

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision* Nos. 481 at 2 (1987), 480 at 5 (1987).

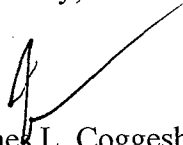
²Regardless of the applicability of section 552.1175, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Gov't Code* § 552.147(b).

the sheriff's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the sheriff's office determines the requested information, to the extent it exists, relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the sheriff's office must release CHRI pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code. The sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; (2) the information we have marked under section 552.1175 of the Government Code if it pertains to individuals who are subject to section 552.1175(a) of the Government Code and they elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and (3) the information we have marked under section 552.130 of the Government Code. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 759713

Enc. Submitted documents

c: Requestor
(w/o enclosures)