



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Mr. M. Matthew Ribitzki
Deputy City Attorney
City of Burleson
141 West Renfro
Burleson, Texas 76028

OR2019-11717

Dear Ms. Ribitzki:

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# 763241.

The Burleson Police Department (the "department") received a request for all information pertaining to a specified incident involving the requestor and all police reports pertaining to a named individual at a specified location during a certain time period. You state the department will release some of the requested information. You also state the department will redact information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

¹Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

(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) (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.

The requestor asks, in part, for all information held by the department concerning a named individual. Therefore, to the extent the department maintains any unspecified law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor also asks for information pertaining to a specific incident. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 of the Government Code on that ground. Further, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

You state the department will redact motor vehicle record information under section 552.130(c) 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. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the department must withhold the remaining motor vehicle record information under section 552.130 of the Government Code.

As noted above, section 552.101 encompasses the doctrine of 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. As noted above, this office has also found an individual's criminal history, when compiled by a governmental body, may be protected under common-law privacy. *Cf. Reporters Comm.*, 489 U.S. at 764. 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.). You indicate the department will redact dates of birth pursuant to the previous determination issued to the department in Open Records Letter No. 2016-08169 (2016).³ However, we note the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See Gov't Code* § 552.023(a); ORD 481 at 4. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the date of birth belonging to the requestor, the department must withhold all living public citizens' dates of birth and 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 department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, to the extent the department maintains any unspecified law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record information belonging to the requestor, the department must withhold the submitted motor vehicle record information under section 552.130 of the Government Code. With the exception of the date of birth belonging to the requestor, the department must withhold all living public citizens' dates of birth and the information we marked under section 552.101

³Open Records Letter No. 2016-08169 is a previous determination issued to the City of Burleson authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

of the Government Code in conjunction with common-law privacy. The department 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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large initial "E" and a stylized "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 763241

Enc. Submitted documents

c: Requestor
(w/o enclosures)