



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Ms. Captoria Brown  
Senior Paralegal  
City of Carrollton  
P.O. Box 110535  
Carrollton, Texas 75011-0535

OR2019-18525

Dear Ms. Brown:

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# 773950 (City ID# 16027).

The City of Carrollton (the "city") received a request for information related to specified citations involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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. This section 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 (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. 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.

We understand you to claim present request requires the city to compile unspecified law enforcement records concerning the requestor's client. However, we note the instant request seeks information relating to the specified citations. This information is not part of a criminal history compilation protected by common-law privacy and the city may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes. You raise section 552.101 of the Government Code in conjunction with chapter 66 of the Code of Criminal Procedure. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Article 66.101 of the Code of Criminal Procedure provides the following:

(a) The Department of Public Safety [{"DPS"}] shall record data and maintain the computerized criminal history system that serves as the record creation point for criminal history information maintained by the state.

(b) The computerized criminal history system must contain the information required by this chapter.

(c) [DPS] shall operate the computerized criminal history system and develop the necessary interfaces in the system to accommodate inquiries from the statewide automated fingerprint identification system implemented by [DPS].

Crim. Proc. Code art. 66.101. In addition, article 66.152(a) of the Code of Criminal Procedure provides:

(a) Information in the corrections tracking system relating to a sentence to be served under the jurisdiction of the Texas Department of Criminal Justice must include:

(1) the offender's name;

(2) the offender's state identification number;

(3) the sentencing date;

(4) the sentence for each offense, by offense code and incident number;

(5) if the offender was sentenced to imprisonment:

(A) the unit of imprisonment;

(B) the length of the sentence for each offense; and

(C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or concurrently; and

(6) if a sentence other than a fine or imprisonment was ordered, a description of the sentence ordered.

*Id.* art. 66.152(a). Finally, article 66.203 of the Code of Criminal Procedure provides that “[a] criminal justice agency, the [Criminal Justice Policy Council], and the Legislative Budget Board may not disclose to the public information in an individual’s criminal history record if the record is protected by state or federal law or regulation.” *Id.* art. 66.203. You claim the submitted information is confidential pursuant to section 552.101 of the Government Code in conjunction with articles 66.101, 66.152(a), and 66.203 of the Code of Criminal Procedure. We note, however, that article 66.101 provides for the creation and operation of a computerized criminal history system and article 66.152(a) provides for the inclusion of certain types of information related to specified criminal sentences in this computerized criminal history system. Upon review, we find neither of these articles are confidentiality provisions. Furthermore, although article 66.203 states an individual’s criminal history record may not be disclosed if it is protected by state or federal law or regulation, this article does not itself explicitly make any information confidential. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with article 66.101, article 66.152(a), or article 66.203 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled

to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the FBI number we have marked consists of CHRI that is confidential under section 411.083. Accordingly, the city must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>1</sup>

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. 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. *Indus. Found.*, 540 S.W.2d at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, we note the requestor has a right of access to his client’s date of birth pursuant to section 552.023 of the Government Code, and this information may not be withheld from him under common-law privacy. *See Gov’t Code* § 552.023(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 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 himself). Thus, the city may not withhold the date of birth you have marked under section 552.101 of the Government Code in conjunction with 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Gov’t Code* § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his client’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Thus, the city may not withhold any of the information you have marked under section 552.130 of the Government Code from this requestor.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Gov’t Code* § 552.147(a). However, we note the requestor has a right to his client’s social security number. *See generally id.* § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold the information you have marked under section 552.147 of the Government Code from this requestor.

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<sup>1</sup>We note the requestor can obtain his client’s CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

In summary, the city must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and must release the remaining information to this requestor.<sup>2</sup>

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/be

Ref: ID# 773950

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As noted above, the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.