



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

Ms. Cary D. Kirby
County Attorney
County of Angelina
P.O. Box 1845
Lufkin, Texas 75902-1845

OR2019-20419

Dear Ms. Kirby:

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# 777311.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to two named individuals during a specified time, including information pertaining to a specified incident. You state you released some information. You claim some of 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 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. 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) (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 that 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. Additionally, 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.).

The present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. We find the request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the request, in part, seeks information related to a specified incident. Therefore, information relating to the specified incident does not implicate the named individuals' rights to privacy, and this information may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. We also note the sheriff's office has submitted information that does not depict the named individuals as suspects, arrestees, or criminal defendants. This information does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101. However, the sheriff's office must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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). You state the information pertaining to report number 19-00025 relates to an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold the information pertaining to report number 19-00025 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information pertaining to report number 19-00025 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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/>

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

[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, appearing to read 'Meagan J. Conway', with a stylized, cursive script.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/mo

Ref: ID# 777311

Enc. Submitted documents

c: Requestor
(w/o enclosures)