



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2019

Mr. Alexander Garcia  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2019-26656

Dear Mr. Garcia:

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# 787195 (CCPD File No. RMan1).

The Corpus Christi Police Department (the "department") received a request for a specified incident report involving a named individual. 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. This section 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. However, the requestor asks for information pertaining to a specified incident. Because the requestor specifically asks for this information, it is not part of a compilation of any individual's criminal history. Therefore, this information is not confidential under common-law privacy, and the department may not withhold it as a compilation of an individual's criminal history under section 552.101 on that ground.

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 the Department of Public Safety ("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 numbers we have marked consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold the FBI numbers 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 note above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. 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. *Id.* 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 states he represents the named individual and may have a right of access to the named individual's date of birth. Accordingly, if the requestor is not acting as the authorized representative of the named individual, the department must withhold this individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential

---

<sup>1</sup> We note an individual can obtain their own CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Conversely, to the extent the requestor is acting as an authorized representative of the named individual, the department must release this individual's date of birth. In either event, the department must withhold the remaining public citizen's date of birth 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. *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, to the extent the requestor is acting as the authorized representative of the named individual, he has a right of access to this individual'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. To the extent the requestor is not acting as the authorized representative of the individual at issue, the city must withhold the information we have marked related to this individual under section 552.130 of the Government Code. In either event, the department must withhold the remaining information we have marked under section 552.130 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not acting as the authorized representative of the named individual, the department must withhold this individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy and the information we have marked related to this individual under section 552.130 of the Government Code. In either instance, the department must withhold: (1) the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the remaining public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the remaining information we have marked under section 552.130 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>2</sup>

---

<sup>2</sup> As noted above, the requestor may have a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. To the extent the requestor has a right of access, if the department receives another request for this information from an individual without such a right of access, we note section 552.130(c) of the Government Code allows a governmental body to react 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 553.130(e). *See id.* § 552.130(d), (e). Furthermore, we note Open Records Letter No. 2016-00831 authorizes the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. Additionally, if the requestor is not acting as the authorized representative of the named individual, we note section 552.147(b) of the Government Code authorizes a government 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. *Id.* § 552.147(b). However, to the extent the requestor is acting as this individual's authorized representative, the requestor has a right of access to this social security number and it must be released to him. *See generally id.* § 552.023(a); ORD 481 at 4.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 787195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)