



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2019

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2019-30866

Dear Mr. Anderson:

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# 794464 (Ref. No. 19PIA352).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for call reports pertaining to a specified address and involving two named individuals during a stated period of time. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate

¹ Although you raise section 552.101 of the Government Code in conjunction with section 411.084 of the Government Code, we understand you to raise section 552.101 in conjunction with section 411.083 of the Government Code.

or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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.). 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, information that refers to a named 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.

The present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Accordingly, to the extent the sheriff's office maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information in which neither of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individuals and may not be withheld as a compilation of criminal history.

Nevertheless, upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.² However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining information 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 statutes, such as 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

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). 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 F, of the Government Code. Upon review, we find you have failed to demonstrate the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.³ *See id.* § 552.130. Accordingly, the sheriff’s office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff’s office maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, 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: (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (3) release the remaining information to this requestor.⁴

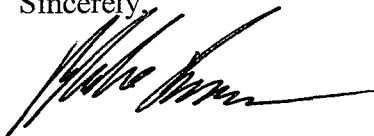
³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴ We note the requestor has a special right of access to her own date of birth. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves). This office has previously issued Open Records Letter No. 2019-02944 (2019), a previous determination authorizing the sheriff’s office 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. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must withhold the requestor’s date of birth in accordance with the previous determination issued in Open Records Letter No. 2019-02944. We also note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a

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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 794464

Enc. Submitted documents

c: Requestor
(w/o enclosures)