



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2019

Ms. Stephanie Walker
Legal Assistant
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2019-35818

Dear Ms. Walker:

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# 802337 (File No. 19OR-102).

The Comal County Criminal District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified address and two named individuals during a defined time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 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.

The present request seeks unspecified law enforcement records pertaining to two named individuals. This request requires the district attorney's office to compile the named individuals' criminal histories and implicates the privacy of the named individuals. Therefore, to the extent the district attorney's office maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the district attorney's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, 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 individuals are not depicted as suspects, arrestees, or criminal defendants. 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.

Next, we note call for service number 19-08-5135 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-35146 (2019). In that ruling, we determined the district attorney's office must release the information at issue. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See Gov't Code* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the district attorney's office may not now withhold the information that was previously released unless such release is expressly prohibited by law or the information is confidential by law. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Accordingly, pursuant to section 552.007, the district attorney's office may not now withhold under section 552.108 the information it previously released pursuant to Open Records Letter No. 2019-35146. Further, we find the facts and circumstances on which the prior ruling was based have not changed in regard to the information at issue. Thus, the district attorney's office must continue to rely on Open Records Letter No. 2019-35146 as a previous determination and release the information previously ruled upon in accordance with that ruling.¹ *See* Open Records Decision No. 673

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

(2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, to the extent the district attorney's office maintains law enforcement records listing the named individuals as suspects, arrestees, or criminal defendants, the district attorney's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must continue to rely on Open Records Letter No. 2019-35146 as a previous determination and release the information previously ruled upon in accordance with that ruling.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 802337

Enc. Submitted documents

c: Requestor
(w/o enclosures)