



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Mr. John B. Strong  
Assistant City Attorney  
Fort Worth Police Department  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2020-02157

Dear Mr. Strong:

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# 807480 (PIR No. W092847).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including specified incidents. You state you have released criminal history record information ("CHRI") to the requestor pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2) (entity authorized by chapter 411, subchapter F of the Government Code to obtain CHRI maintained by the Texas Department of Public Safety ("DPS") that relates to another person is authorized to obtain CHRI from any other criminal justice agency in this state that relates to the person); *see also id.* § 411.089 (criminal justice agency entitled to obtain from DPS any CHRI maintained by DPS about a person). 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. 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. 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 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. We note records relating to routine traffic violations are not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request, in part, seeks unspecified law enforcement records pertaining to a named individual. This portion of the request requires the department to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor also seeks information pertaining to specified incidents; thus, this portion of the request does not require the department to compile an individual's criminal history and does not implicate the privacy interests of the named individual. We note the department has submitted specified report numbers 0511288 and 98127573, report number 140361104 that pertains to a routine traffic offense, and report number 97292344 that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

[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). Upon review, we find report numbers 98127573 and 97292344 were used or developed in an investigation under chapter 261, so as to fall within the scope

of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Therefore, we find report numbers 98127573 and 97292344 are confidential pursuant to section 261.201. Accordingly, the department must withhold report numbers 97292344 and 98127573 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, you failed to demonstrate the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261, or that this information was used or developed in an investigation of alleged or suspected child abuse or neglect. Accordingly, we conclude this information is not within the scope of section 261.201. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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 or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Thus, the department must withhold all public citizens’ dates of birth and the information we marked in the remaining information 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 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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, other than the specified incidents, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 97292344 and 98127573 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold all public citizens’ dates of birth and the information we marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record

information we marked under section 552.130 of the Government Code. The remaining information must be released.

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 "Pearlie Gault", with a stylized flourish at the end.

Pearlie Gault  
Attorney  
Open Records Division

PG/eb

Ref: ID# 807480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)