



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 18, 2020

Ms. Claire Yancey  
Assistant District Attorney  
Denton County Sheriff's Office  
127 North Woodrow Lane, Suite 300  
Denton, Texas 76205

OR2020-05014

Dear Ms. Yancey:

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# 812195 (Ref. Nos. S002805, S002833).

The Denton County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to named individuals during specified time periods. The first requestor additionally requested a specified report pertaining to the named individuals.<sup>1</sup> You state you have released some information to the first requestor. 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 representative sample of information.<sup>2</sup>

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

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<sup>1</sup> You state the sheriff's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 requests seek unspecified law enforcement records pertaining to named individuals. This request requires the sheriff's office to compile the named individuals' criminal history and implicates the privacy of the named individuals. Therefore, to the extent the sheriff's office maintains law enforcement records listing either named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the first requestor also asks for information pertaining to a specific incident. Because the first requestor specifically asks for this information, it is not part of a compilation of either individual's criminal history and may not be withheld on that basis. Further, we note you have submitted information in which neither named individual is depicted as a suspect, arrestee, or criminal defendant. This information also does not implicate the privacy interests of either individual and may not be withheld as a compilation of criminal history. Therefore, this information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find the information we have marked and indicated was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). We note the first requestor is a parent of the child victims listed in the submitted information, but the first requestor is alleged to have committed the alleged abuse or neglect. Thus, the first requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). Accordingly, the sheriff’s office must withhold the information we have marked and indicated from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information we have marked pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information we have marked and indicated.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Accordingly, with the exception of basic information, the sheriff's office may withhold the information we have marked and indicated under section 552.108(a)(2) of the Government Code.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the first requestor knows both the identity of the individual involved as well as the nature of the incident in the information at issue. Therefore, withholding only the individual's identity or certain details of this incident from the first requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold the information we have marked in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup> However, the sheriff's office has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy from the second requestor. Accordingly, the sheriff's office may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis from the second requestor. Nevertheless, we conclude the basic information you have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the basic information you have marked from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the sheriff's office maintains law enforcement records listing either named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked and indicated from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff's office may withhold the information we have marked and indicated under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked in its entirety from the first requestor and the basic information you have marked from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

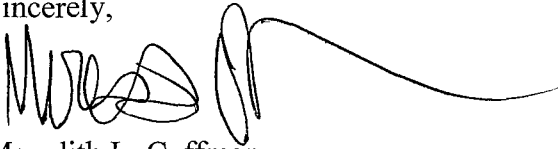
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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 <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 'M. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/be

Ref: ID# 812195

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)