



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

Ms. Krystal Temple
Records Division
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2020-13071

Dear Ms. Temple:

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# 823594 (Ref. No. R20-00172).

The Hood County Sheriff's Office (the "sheriff's office") received a request for information related to police visits to a specified address for a particular period of time. You state the sheriff's office has released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code.¹ 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 information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [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:

¹Although you do not raise section 552.147 of the Government Code, we understand you to raise it based on your markings.

(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 the information we have marked in S1614755 was used or developed in an investigation of alleged or suspected abuse or neglect made 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 this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information and, therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate the remaining information in S1614755 and S1524168 consist of a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See* Fam. Code. § 261.001(1), (4). Therefore, we conclude section 261.201 is not applicable to any of the remaining information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information related to S1825129, S1825130, S1825131, S1825222, S1826046, and S1826050 pertain to ongoing criminal investigations. Based upon your representation and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.— Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to S1825129, S1825130, S1825131, S1825222, S1826046, and S1826050. However, we find the sheriff’s office does not inform us S1712457, S1717704, and S1826166 pertain to specific ongoing criminal investigations or prosecutions, nor has the sheriff’s office

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

explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, we conclude the sheriff's office has failed to demonstrate the application of section 552.108(a)(1) to S1712457, S1717704, and S1826166. Therefore, the sheriff's office may not withhold this information under section 552.108(a)(1).

However, we note, and you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other things, a detailed description of the offense. See ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold the information pertaining to S1825129, S1825130, S1825131, S1825222, S1826046, and S1826050 under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. See Open Records Decision No. 649 (1996). We understand Hood County is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. Upon review, the sheriff's office must withhold the telephone numbers and addresses you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers or addresses furnished by a 9-1-1 service supplier. If the marked information does not consist of the originating telephone number or address provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318. In either event, we find you have failed to demonstrate the remaining information at issue consists of the originating telephone number or address of a 9-1-1 caller that was furnished by a 9-1-1 service supplier. Accordingly, the sheriff's office may not withhold any of the remaining information, which we have indicated for release, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by 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

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. We further note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). We also note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find a portion of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Therefore, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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. 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). We also note active warrant information or other information relating to one’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Additionally, we note information

relating to domestic violence is generally not protected by common-law privacy. *See* Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not a private matter). 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.). However, because “the right of privacy is purely personal,” that right “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (second) of Torts § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy. You argue to withhold SA1524168, S1614755, S1620244, S1620722, and S1808941 and the basic information of S1825129 and S1815131 under common-law privacy. Upon review, we find you have not demonstrated, and the information at issue does not reflect, this is a situation in which this information must be withheld in its entirety to protect an individual's privacy interest. However, we find the some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of this information may pertain to deceased individuals. Therefore, to the extent the information we have marked does not pertain solely to a deceased individual, the sheriff's office must withhold the information we have marked, along with all identifiable living individuals' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, the sheriff's office may not withhold the information we have marked under section 552.101 of the Government Code on the basis of common-law privacy if it only pertains to a deceased individual. Further, we find the sheriff's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public or it pertains solely to a deceased individual. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You state you will redact information pursuant to section 552.130(c) of the Government Code.⁴ We note the remaining information contains additional motor vehicle record

⁴Section 552.130(c) of the Government Code allows a governmental body to redact 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 552.130(e). *See id.* § 552.130(d), (e).

information. We also note you marked information that does not consist of motor vehicle record information for purposes of section 552.130. Section 552.130 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. Gov't Code § 552.130(a). Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you marked, the additional information we have marked, and the driver's license and license plate numbers and issuing states in the remaining information. However, we find you have failed to demonstrate the remaining information at issue is subject to section 552.130. Thus, the sheriff's office may not withhold the remaining information at issue on that basis.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we find the sheriff's office may withhold the social security numbers in the remaining information under section 552.147(a) of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold the information pertaining to S1825129, S1825130, S1825131, S1825222, S1826046, and S1826050 under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the telephone numbers and addresses you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers or addresses furnished by a 9-1-1 service supplier. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the information we have marked does not pertain solely to a deceased individual, the sheriff's office must withhold the information we have marked, along with all identifiable living individuals' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff's office must withhold the information you marked, the additional information we have marked, and the driver's license and license plate numbers and issuing states in the remaining information. The sheriff's office may withhold the social security numbers in the remaining information under section 552.147(a) of the Government Code. The sheriff's office must release the remaining 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/eb

Ref: ID# 823594

Enc. Submitted documents

c: Requestor
(w/o enclosures)