



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2020

Ms. DeAnn Lin  
Ms. Tiffany Bangs  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2020-16818

Dear Ms. Bangs and Ms. Lin:

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# 834191 (Ref. Nos. 20PIA0266, 20PIA0285).

The Office of the Harris County Constable, Precinct 5, (the "constable's office") received two requests from different requestors for information pertaining to a specified address and two named individuals during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the constable's office's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You state, and provide documentation showing, the constable's office received the first request for information on April 7, 2020. You do not inform us the constable's office was closed for any business days between April 7, 2020, and April 21, 2020. Thus, the constable's office's ten-business-day deadline was April 21, 2020. However, you did not request a ruling from this office until April 25, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the constable's office failed to comply with the requirements of section 552.301 with respect to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The constable's office claims sections 552.101 and 552.108 of the Government Code for the submitted information. Thus, in failing to comply with the procedural requirements of section 552.301 in relation to the first request, the constable's office failed to comply with section 552.301 with respect to the same information responsive to the second request. *See Gov't Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address their applicability to the submitted information.<sup>1</sup> However, we find the constable's office failed to demonstrate a compelling reason to address its remaining argument.

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

However, we note the second requestor seeks information involving herself, and she has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See Gov't Code* § 552.023(a)-(b) (governmental body may not deny

---

<sup>1</sup> 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).

access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, 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 neither named individual is depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of either individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

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). The 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.). As previously noted, the second requestor has a right of access to her own private information. *See* Gov't Code § 552.023(a); ORD 481 at 4. Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the second requestor's date of birth, which must be released to her, the constable's office must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the constable's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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. Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the second requestor has a right of access to her own motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. In this instance, the second requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the second requestor, we must rule conditionally. To the extent the motor vehicle record information we have marked belongs to the second requestor, she has a right of access under section 552.023 to this information, and the constable's office may not withhold such information from her under section 552.130 from the requestor. To the extent the motor vehicle record information we have marked does not belong to the second requestor, the constable's office must withhold the motor vehicle record information we have marked from her under section 552.130 of the Government Code. Regardless, the constable's office must withhold the motor vehicle

record information we have marked from the first requestor under section 552.130 of the Government Code.

In summary, to the extent the constable's office maintains law enforcement records listing either individual named in the first request as a suspect, arrestee, or criminal defendant, the constable's office must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the second requestor's date of birth, which must be released to her, the constable's office must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we have marked does not belong to the second requestor, the constable's office must withhold the motor vehicle record information we have marked from her under section 552.130 of the Government Code. The constable's office must withhold the motor vehicle record information we have marked from the first requestor under section 552.130 of the Government Code. The constable'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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/be

Ref: ID# 834191

Enc. Submitted documents

c: Requestor  
(w/o enclosures)