



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2020

Mr. Adam Anderson  
Assistant County Attorney  
County of Montgomery  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2020-26292

Dear Mr. Anderson:

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# 849851 (ORR# 20PIA261).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find

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<sup>1</sup> Although you raise section 552.101 of the Government Code in conjunction with section 411.084 of the Government Code, we understand you to raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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 private and may not be withheld under section 552.101 on that basis.

Upon review, we find the present request seeks unspecified law enforcement records pertaining to the named individual. We find this request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. However, we note the requestor may be acting as an authorized representative of the named individual, in which case the requestor would have a special right of access to this individual's otherwise private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny 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 herself). Because we are unable to determine whether the requestor is acting as an authorized representative of the named individual, we rule conditionally. Accordingly, if the requestor is not acting as an authorized representative of the named individual at issue, then to the extent the sheriff's office maintains law enforcement records involving the 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. If, however, the requestor is acting as an authorized representative of the named individual at issue, then the sheriff's office may not withhold information involving the named individual under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. Further, we note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation and may not be withheld 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 411.083 of the Government Code which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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. 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find you have failed to demonstrate the information at issue consists of

confidential CHRI. Therefore, the sheriff's office may not withhold any portion of the information at issue under section 552.101 on this basis.

As stated above, section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor may be acting as an authorized representative of the named individual and, thus, may have a right of access to this individual's information under section 552.023. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, we must rule conditionally. To the extent the requestor is not acting as the authorized representative of the individual at issue, the sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the requestor is acting as the authorized representative of the individual at issue, the sheriff's office must release this individual's date of birth, and withhold the remaining public citizen's date of birth 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, to the extent the requestor is acting as the authorized representative of the named individual, she has a right of access to this individual's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. To the extent the requestor is not acting as the authorized representative of the individual at issue, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. Conversely, to the extent the requestor is acting as the authorized representative of the individual at issue, the sheriff's office must release this individual's motor vehicle record information, and withhold the remaining motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the named individual at issue, then (1) to the extent the sheriff's office maintains law enforcement records involving the 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; (2) the sheriff's office must withhold all

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<sup>2</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, 480 (1987), 470 (1987).

public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (4) the sheriff's office must release the remaining information. To the extent the requestor is acting as the authorized representative of the individual at issue, the sheriff's office must (1) withhold the date of birth not pertaining to the named individual under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked not belonging to the named individual under section 552.130 of the Government Code; and (3) release the remaining information.<sup>3</sup>

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,

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/gw

Ref: ID# 849851

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> As noted above, the requestor may have a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. To the extent the requestor has a right of access, if the sheriff's office receives another request for this information from an individual without such a right of access, we note section 552.130(c) of the Government Code allows a governmental body to react 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 553.130(e). *See id.* § 552.130(d), (e). Additionally, we note section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). However, to the extent the requestor is acting as the named individual's authorized representative, the requestor has a right of access to this social security number and it must be released to her. *See generally id.* § 552.023(a); ORD 481 at 4.