



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2020

Mr. Ryan Brooke
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City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2020-26717

Dear Mr. Brooke:

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# 850226 (File No. 2867).

The Lubbock Police Department (the "department") received a request for all records involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

objectionable to a reasonable person. *Cf. United States 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request requires the department to compile unspecified law enforcement records concerning the named individual, thus implicating this individual's right to privacy. However, we note the named individual is the requestor's client, and the requestor has a right of access to his client's private information that is otherwise protected under common-law privacy under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor's client may not be withheld from him as a compilation of criminal history under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by section 58.008 of the Family Code. Section 58.008 provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian[.]

...

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); Act of May 21, 2019, 86th Leg., R.S., S.B. 2135, § 3 (to be codified at Fam. Code § 58.008(d)); Fam. Code § 58.008(e)(1); *see also* Fam. Code § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Upon review, we find report number 13-10437 involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply to report number 13-10437. Therefore, the department must withhold report number 13-10437 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We find report numbers 10-53486 and 11-24673 also involve juvenile offenders, so as to fall within the scope of section 58.008(b). However, the requestor is the authorized representative of one of the juvenile offenders at issue in report numbers 10-53486 and 11-24673, who is now an adult. Thus, the requestor generally has a right to inspect juvenile law enforcement records concerning the juvenile at issue pursuant to section 58.008(d) of the Family Code. Therefore, report numbers 10-53486 and 11-24673 may not be withheld from him under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. *See id.* § 58.008(b). However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness to whom the requestor is not the authorized representative of must be redacted. *See id.* § 58.008(e)(1). Accordingly, upon review, we find the department must withhold the identifying information of the other juveniles in report numbers 10-53486 and 11-24673 under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The department states report number 15-35203 relates to a pending criminal investigation. We note the report at issue pertains to an investigation of criminal mischief. The statute of limitations for this offense is two years from the dates of the underlying offense. *See* Penal Code §§ 22.02, 22.01, 25.03, 28.03, 42.07; Crim. Proc. Code arts. 12.01, 12.02. The department does not inform us any criminal charges were filed within the limitations period for this case. Thus, we find the department has failed to demonstrate release of report number 15-35203 would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the department may not withhold report number 15-35203 under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 related to report number 15-14186 pertains to a criminal investigation that did not result in a conviction or a deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information related to report number 15-14186.

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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may generally withhold the information related to report number 15-14186 under section 552.108(a)(2) of the Government Code.

However, we note the requestor is a representative of the Regional Public Defender for Capital Cases for Lubbock County (the “public defender’s office”). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state CHRI maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Accordingly, the requestor is authorized to obtain CHRI pertaining to report number 15-14186 from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed. *See id.* §§ 411.087(a)(2), .1272. Although the department raises section 552.108 of the Government Code for this information, we note a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, if the department determines report number 15-14186 relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the department must release CHRI from this report. In that instance, with the exception of basic information, which must be released, the department may withhold the remaining information related to report number 15-14186 under section 552.108(a)(2) of the Government Code. However, if the department determines report number 15-14186 does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the department need not release CHRI, and with the exception of basic information, which must be released, the department may withhold the information related to report number 15-14186 under section 552.108(a)(2) of the Government Code.²

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *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. *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.). Upon review, we find the remaining information includes dates of birth. However, some of the dates of birth pertain to individuals who will be de-identified and whose privacy interests are, thus, protected. Additionally, we note one of the dates of birth belongs to the requestor’s client to which the requestor has a right of access under section

² In either instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

552.023 of the Government Code, as noted above. Therefore, with the exception of the dates of birth pertaining to the de-identified individuals and the requestor's client, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) ORD 481 at 4. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov't Code § 552.137(a)-(c). We note the requestor has a right to his client's e-mail address under section 552.137(b). *Id.* § 552.137(b). The e-mail addresses at issue is not excluded by subsection (c). The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the department must withhold report number 13-10437 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code. The department must withhold the identifying information of the other juveniles in report numbers 10-53486 and 11-24673 under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. If the department determines report number 15-14186 relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release CHRI from this reports, and with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code. If the department determines report number 15-14186 does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then, with the exception of basic information, which must be released, the department may withhold report number 15-14186 under section 552.108(a)(2) of the Government Code. With the exception of the dates of birth pertaining to the de-identified individuals and the requestor's client, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-

³ 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).

law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must release the remaining information.⁴

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,

Pearlie Gault
Attorney
Open Records Division

PG/jxd

Ref: ID# 850226

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the requestor has a right of access beyond that of the general public to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. We also note the information being released includes social security numbers belonging to individuals other than the requestor's client. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).