



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2020

Ms. Audrea Hutson
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-27087

Dear Ms. Hutson:

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# 851066.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three specified incidents involving three named individuals. You state the sheriff's office will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

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. Although you contend the submitted information is protected by common-law privacy as a compilation of criminal records, we note the requestor seeks specified records. Thus, we find you have failed to demonstrate the present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. Accordingly, none of the submitted information may be withheld as a compilation of the individuals' criminal histories section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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. CHRI means "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." Gov't Code § 411.082(2). 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. Upon review, we find the information we marked consists of CHRI the sheriff's office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

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 id.* § 552.130. Upon review, we find the submitted recordings contain information subject to section 552.130. You state the sheriff's office does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the sheriff's office must withhold the submitted video recordings in their entirety and the information you marked under section 552.130 of the Government Code.² *See* Open Records Decision No. 364 (1983).

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Further, as we are able to make this determination, we do not address the applicability of section

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy which is subject to the two-part test discussed above. *Industrial 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff'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.

In summary, the sheriff's office must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the submitted video recordings in their entirety and the information you marked under section 552.130 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/rm

Ref: ID# 851066

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).