



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2020

Ms. Lola White  
Records Clerk  
Hood County Sheriff's Office  
400 Deputy Larry Miller Drive  
Granbury, Texas 76048

OR2020-30699

Dear Ms. White:

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# 856502.

The Hood County Sheriff's Office (the "sheriff's office") received a request for information from a specified time period pertaining to a named individual. You state the sheriff's office does not possess some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 of the Government Code 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. Furthermore, we find a compilation of an individual's criminal history is highly embarrassing information, the publication of which

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<sup>1</sup> The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 requestor asks for information held by the sheriff's office pertaining to a named individual. This request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement information depicting 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. However, the sheriff's office has submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information does not consist of compilations of the named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 in conjunction with common-law privacy as a criminal history compilation.

Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a right of access to her private information. *See* Gov't Code § 552.023(a) (“person or a 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 that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, with the exception of the requestor's date of birth, the sheriff's office must withhold all living 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 the sheriff's office has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country.<sup>2</sup> Gov't Code § 552.130(a)(1), (2).

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481(1987), 480 (1987), 470 (1987).

Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement information depicting 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. Further, the sheriff's office must withhold all dates of birth in the information at issue that are not the requestor's, and the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. As no other exceptions to disclosure have been raised, the remaining information must be released.<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,

Chase D. Young  
Attorney  
Open Records Division

CDY/gw

Ref: ID# 856502

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.