



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2022

Mr. Samuel R. Jimison
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2022-06237

Dear Mr. Jimison:

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# 936084 (ORR# MA1f9).

The Corpus Christi Police Department (the "department") received a request for information pertaining to the requestor's client and a named individual. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. 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. Upon review of the request and the submitted information, we find the requestor is, in part, seeking information involving her client and the named individual. The submitted information involves the requestor's client and the named individual. Thus, the department may not withhold the submitted information under section 552.101 on the basis of the named individual's privacy interests as a compilation of his criminal history.

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 the information it has marked under section 552.108(a)(1) relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *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 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in the *Houston Chronicle* decision, and includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Although the department seeks to withhold the identity of the one of the victims at issue under section 552.108(a)(1), this information consists of basic information. Thus, with the exception of basic information, including the identifying information of both victims at issue in the submitted report, which the department must release, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). 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 criminal justice purposes. *See id.*

§ 411.083(b)(1), .089. The submitted information contains a Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Therefore, the department must withhold the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must withhold the information we have marked 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 personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov’t Code § 552.130. The department must withhold the driver’s license number and issuing state in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of basic information, including the identifying information of both victims at issue in the submitted report, which the department must release, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the following: (1) the submitted FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the driver’s license number and issuing state in the remaining information under section 552.130 of the Government Code. The department must release the remaining information.²

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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

² We note the information at issue contains a social security number. 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 the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 936084

Enc. Submitted documents

c: Requestor
(w/o enclosures)