



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Mr. Phillip J. Smith  
Assistant Criminal District Attorney  
Gregg County  
101 East Methvin, Suite 333  
Longview, Texas 75601

OR2022-06517

Dear Mr. Smith:

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# 933218.

Gregg County (the "county") received two requests from the same requestor for information involving the requestor and e-mails and text messages between five named individuals. The county claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.137 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *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. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Although the county contends the submitted information is protected by common-law privacy as a compilation of criminal records, we note the requestor, in part, seeks information involving himself. We also note the requestor has a right of access to private information pertaining to himself pursuant to section 552.023 of the Government Code. *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 individuals request information concerning themselves). Therefore, information relating to the requestor may not be withheld as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Additionally, the county has submitted information that does not list the other named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of the other named individuals’ criminal histories, and the county may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Thus, the county may not withhold any portion of the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Accordingly, we will address the county’s remaining arguments against disclosure of this information.

We note the submitted information includes a search warrant. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although the county seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the county may not withhold the submitted search warrant under section 552.103 or section 552.108. Therefore, the county must release the submitted search warrant pursuant to section 552.022(a)(17). However, we will address the county’s arguments under sections 552.103 and 552.108 for the information not subject to section 552.022.

Next, we note the remaining information includes a Toxicology Laboratory Report. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person’s attorney. Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. The county seeks to withhold this information under sections 552.103 and 552.108 of the Government Code. However, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure

under the Act). Sections 552.103 and 552.108 are general exceptions under the Act. Thus, the county must release the Toxicology Laboratory Report to this requestor pursuant to section 724.018 of the Transportation Code.

The county asserts the remaining information is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The county states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude release of some of the information at issue will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the county may withhold the information we have indicated under section 552.108(a)(1) of the Government Code.<sup>1</sup> However, the county does not inform us the remaining information at issue pertains to a specific ongoing criminal investigation or prosecution, nor has the county explained its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, the county has failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1).

Section 552.108 of the Government Code also provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

---

<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). As noted above, a governmental body must explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. The county states the remaining information consists of internal records and notations which reflect the mental impressions or legal reasoning of attorneys representing the state. The county further states the communications are maintained for internal use in matters relating to criminal prosecutions and were not intended for public disclosure. Upon review, we agree some of the information at issue reflects the mental impressions or legal reasoning of attorneys representing the state. Therefore, the county may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup> However, the county has failed to establish sections 552.108(a)(4) and 552.108(b)(3) is applicable to the remaining information at issue. Therefore, the county may not withhold the remaining information under section 552.108(a)(4) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas

---

<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Crime Information Center. *See id.* § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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(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 a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find a portion of the remaining information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). The requestor has a right of access to private information pertaining to the requestor pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); ORD 481 at 4. Accordingly, except for the date of birth belonging to the requestor, the county must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county must release the submitted search warrant pursuant to section 552.022(a)(17) of the Government Code. The county must release the Toxicology Laboratory Report to this requestor pursuant to section 724.018 of the Transportation Code. The county may withhold the information we have indicated under section 552.108(a)(1) of the Government Code. The county may withhold the information we have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Except for the date of birth belonging to the requestor, the county must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining information to this requestor.<sup>3</sup>

---

<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 county receives another request for the same information from a different requestor, the county must again seek a decision from this office.

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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/jxd

Ref: ID# 933218

Enc. Submitted documents

c: Requestor  
(w/o enclosures)