



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2022

Mr. Justin Smith  
Records Division  
City of North Richland Hills  
P.O. Box 820609  
North Richland Hills, Texas 76182-0609

OR2022-06686

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# 935325 (Reference No. W008580-122121).

The North Richland Hills Police Department (the "department") received a request for all information pertaining to the requestor and several named individuals at several addresses over a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). 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 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. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis. We further note the requestor has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

Upon review, we find the present request, in part, requires the department to compile unspecified law enforcement records concerning named individuals other than the requestor. We find this part of the request generally implicates the other named individuals' rights to privacy. However, the requestor also seeks police reports involving herself. This part of the request seeks specified records involving the requestor and does not implicate the other named individuals' right to privacy. Therefore, information involving the requestor may not be withheld from her as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of any reports involving the requestor, to the extent the department maintains law enforcement records depicting the other named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Upon review, we agree some of the reports at issue contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of report numbers 19N31561, 20N12915, 20N40160, and 21N09062 from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report numbers 19N31561, 20N12915, 20N40160, and 21N09062 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.

Further, upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, except where we have marked for release, the department must withhold the information you have marked in report numbers 19N25948, 19N38540, 19N23505, 20N40608, and 21N11567 under section 552.101 of the Government Code in conjunction with common-law privacy. As previously noted, the requestor has a right of access to confidential information pertaining to herself and her minor children pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). Therefore, with the exception of the dates of birth belonging to

the requestor and her minor children, the department must also withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Finally, the department seeks to withhold the identifying information of undercover officers in report number 20N18364 under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. We understand you to represent the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we generally find section 552.152 is applicable to the identities of the undercover officers within the information at issue. However, with regard to a portion of the information you have marked, you have not explained, and we are unable to determine, how release of this information identifies an undercover officer. Accordingly, with the exception of the information we have marked for release, the department must withhold the identifying information of the undercover officers that you have marked under section 552.152 of the Government Code.

In summary, with the exception of any reports involving the requestor, to the extent the department maintains law enforcement records depicting the other named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report numbers 19N31561, 20N12915, 20N40160, and 21N09062 in their entireties under section 552.101 in conjunction with common-law privacy. Except where we have marked for release, the department must withhold the information you have marked in report numbers 19N25948, 19N38540, 19N23505, 20N40608, and 21N11567 under section 552.101 in conjunction with common-law privacy. With the exception of the dates of birth belonging to the requestor and her minor children, the department must also withhold all public citizens' dates of birth under section 552.101 in conjunction with common-law privacy. With the exception of the information we have marked for release, the department must withhold the identifying information of the undercover officers that you have marked in report number 20N18364 under section 552.152 of the Government Code. The department 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,

Michael Pearle  
Assistant Attorney General  
Open Records Division

MAP/jm

Ref: ID# 935325

Enc. Submitted documents

c: Requestor  
(w/o enclosures)