



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 12, 2022

Ms. Cynthia Trevino  
Counsel for the City of Gonzales  
Denton, Navarro, Rocha, Bernal & Zech, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2022-10724

Dear Ms. Trevino:

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# 938726 (ORR# 22-044).

The City of Gonzales (the "city"), which you represent, received a request for all call sheets and incident reports involving a named individual during a certain date range. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it was created before the date range specified in the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.<sup>2</sup>

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<sup>1</sup> Although you also raise section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup> As we are able to make this determination, we need not address your arguments against disclosure of the information at issue.

Next, we must address the city's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You inform us the city received the request for information on January 18, 2022. You do not inform us the city was closed for any business days between January 18, 2022, and February 1, 2022. Thus, the city's ten-business-day deadline to provide the information required by section 552.301(b) by was February 1, 2022. However, the city provided the information at issue by electronic submission on February 7, 2022. *See id.* § 552.309(a) (requirement to submit information within specified time period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). Therefore, we conclude the city has failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information at issue. However, we find the city has failed to establish a compelling reason to address its remaining claimed exception.

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. This section 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 reasonable person. *Cf. U.S. 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Additionally, information that

refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all call sheets and incident reports pertaining to a named individual. We note the responsive information either does not list the named individual as a suspect, arrestee, or criminal defendant or relates to routine traffic violations. This information does not constitute part of a criminal history compilation of the named individual and may not be withheld on that basis. Thus, the responsive information is not confidential under common-law privacy as a compilation of criminal history, and the city may not withhold it under section 552.101 of the Government Code on that basis.

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. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. 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.). Thus, the city must withhold the public citizens' dates of birth in the responsive information 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. *See Gov't Code* § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the public citizens' dates of birth in the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining responsive 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/be

Ref: ID# 938726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)