



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2022

Ms. Audrea Hutson
Open Records
Williamson County
508 South Rock Street
Georgetown, Texas 78626

OR2022-11922

Dear Ms. Hutson:

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# 943024.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state you will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ We understand you will redact social security numbers pursuant to section 552.147(b) of the Government Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² 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. *See* Gov't Code § 552.147(b).

³ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts 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 section 58.008(b) of the Family Code, which provides as follows:

Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find you have failed to demonstrate the applicability of section 58.008(b) to the information at issue. Therefore, the sheriff’s office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family 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 Crime Information Center. *See* Gov’t Code § 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 Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided by 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 of the Government Code in conjunction with chapter 411, subchapter F, of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find some of the submitted information consists of CHRI that is confidential under section 411.083. Therefore, the sheriff’s office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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. This office has held common law privacy protects the identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). We note some of the information at issue pertains to worker’s compensation claims, and thus, there is a legitimate public interest in this information. *See* Open Records Decision No. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities).

Upon review, we find some of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, however, some of the information at issue contains the identifying information of individuals who may have been juvenile offenders. However, because the information at issue does not reflect the ages of these individuals, we must rule conditionally. Accordingly, to the extent the information you marked pertains to offenders ten years of

age or older and under seventeen years of age at the time of the alleged conduct, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the information at issue does not reflect offenders who were ten years of age or older and under seventeen years of age at the time of the alleged conduct, the sheriff's office may not withhold the marked information on that basis. Regardless, with the exception of the information we marked for release, the sheriff's office must withhold the remainder of the information you marked as well as the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, 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 exempts from public disclosure 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. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Therefore, the sheriff's office must withhold the credit card number you marked under section 552.136 of the Government Code.

Section 552.152 of the Government Code 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. You inform us some of the remaining information relates to an undercover peace officer. You assert release of this information would subject the officer to a substantial threat of physical harm. Based upon these representations and our review, we conclude you have demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Therefore, the sheriff's office must withhold the undercover officer's identity, which you marked, under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. To the extent the information you marked pertains to offenders ten years of age or

older and under seventeen years of age at the time of the alleged conduct, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the sheriff's office must withhold the remainder of the information you marked as well as the additional 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 you marked under section 552.130 of the Government Code. The sheriff's office must withhold the credit card number you marked under section 552.136 of the Government Code. The sheriff's office must withhold the undercover officer's identity, which you marked, under section 552.152 of the Government Code. The sheriff's office 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

Ref: ID# 943024

Enc. Submitted documents

c: Requestor
(w/o enclosures)