



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2022

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2022-14828

Dear Mr. Entsminger:

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# 946617 (ORR No. 1029048-1).

The Travis County Sheriff's Office (the "sheriff's office") received a request for several categories of information related to the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the submitted TCOLE identification numbers are unique computer-generated numbers assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Therefore, we find the submitted TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Accordingly, the submitted TCOLE numbers are not subject to the Act, and the sheriff's office need not release this information to the requestor.

Next, we note the information at issue includes a court-filed document. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although the sheriff's office seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed document may not be withheld under section 552.108. We also note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, no portion of the court-filed document subject to section 552.022(a)(17) may be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, the sheriff's office must release the court-filed document subject to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 is generally not applicable to purely

administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You generally assert the remaining information pertains to a criminal investigation conducted by the sheriff's office that concluded in a result other than conviction or deferred adjudication. However, we note the information at issue consists of internal administrative records, and we find you have failed to demonstrate this information deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, the sheriff's office may not withhold any of the information at issue under section 552.108(a)(2).

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. This section 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 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. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Thus, the sheriff's office 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 and federal law.<sup>1</sup>

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in relevant part:

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

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

*Id.* § 411.192(a)-(b). We note the remaining information contains concealed handgun license information maintained by DPS. We note the requestor represents the license holder. Therefore, with the exception of the name, date of birth, gender, race, and zip code pertaining to the requestor's client, which the sheriff's office must release pursuant to section 411.192(b) of the Government Code, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.<sup>2</sup>

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. 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. Additionally, 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.). In this instance, the requestor is the authorized representative of one of the individuals whose privacy interests are at issue. *See Gov't Code § 552.023(a)* ("person's authorized representative has special right of access, beyond

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

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 individual requests information concerning himself). Thus, the requestor has a right of access to information pertaining to the individual at issue that would otherwise be confidential under common-law privacy.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the date of birth pertaining to the requestor's client, the sheriff's office must withhold the public citizens' dates of birth in the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.<sup>3</sup>

Gov't Code § 552.1175(b); *see also id.* § 552.1175(a) (types of individuals to whom section 552.1175 applies). Section 552.1175 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Some of the remaining information may relate to individuals subject to section 552.1175 of the Government Code. However, we are unable to determine from the information provided which, if any, of the individuals at issue are subject to this exception. Thus, we must rule conditionally. Accordingly, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code; however, any cellular

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<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. Conversely, to the extent the individuals whose information is at issue are not subject to section 552.1175 or do not elect to restrict access to their information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175.

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(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a); ORD 481 at 4. However, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the submitted TCOLE numbers are not subject to the Act, and the city need not release this information to the requestor. The sheriff's office must release the court-filed document subject to section 522.022(a)(17) of the Government Code. The sheriff's office 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 and federal law. With the exception of the name, date of birth, gender, race, and zip code pertaining to the requestor's client, which the sheriff's office must release pursuant to section 411.192(b) of the Government Code, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. With the exception of the date of birth pertaining to the requestor's client, the sheriff's office must withhold the public citizens' dates of birth in the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. The sheriff's office must withhold the motor vehicle record information we have marked under

section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The sheriff's office must release the remaining information to this requestor.<sup>4</sup>

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 946617

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. However, the requestor has a right of access to her client's social security number and it must be released to her. *See generally id.* § 552.023(b).