



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 26, 2022

Ms. Derenda Rush
Records Division
Amarillo Police Department
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2022-21950

Dear Ms. Rush:

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# 962180 (PIR #22-1434).

The Amarillo Police Department (the "department") received a request for information pertaining to four named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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 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) (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.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicate the named individuals' rights to privacy. Therefore, to the extent the department maintains unspecified law enforcement records depicting any of the 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. However, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list any of the named individuals as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation of the named individual and may not be withheld on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the department seeks to withhold the entirety of the information at issue under section 552.101 in conjunction with common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. Upon review, however, we conclude some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a current or former member

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, of the Texas military forces, as that term is defined by Section 437.001[.]” *Id.* § 552.1175(a)(15). Thus, the department must withhold the information we marked under section 552.1175(a)(15) of the Government Code if it relates to an individual subject to that section who elects to restrict access to that information in accordance with section 552.1175(b) of the Government Code. Conversely, if the individual is either not subject to section 552.1175(a)(15) or does not elect to restrict access to the information in accordance with section 552.1175(b), then the department may not withhold this information under section 552.1175(a)(15).

In summary, to the extent the department maintains unspecified law enforcement records depicting any of the 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 the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.1175(a)(15) of the Government Code if it relates to an individual subject to that section who elects to restrict access to that information in accordance with section 552.1175(b) 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 962180

Enc. Submitted documents

c: Requestor
(w/o enclosures)