



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2022

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2022-23360

Dear Ms. Miller:

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# 964074 (ORR 2022-73).

The Denton County Sheriff's Office (the "sheriff's office") received a request for the report related to a particular incident at a specified address. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions 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 information made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). The sheriff's office indicates it is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The sheriff's office seeks to withhold names, telephone numbers, and addresses of callers under section 772.318. We conclude the sheriff's office must withhold the telephone numbers and addresses at issue under section 552.101 of the Government Code in conjunction with section 772.318 of the Health

¹ Although you do not raise section 552.130 of the Government Code in your brief, we understand the department to assert this exception based on your markings.

and Safety Code if they consist of the originating telephone numbers and addresses furnished by a 9-1-1 service supplier.² We note names of callers are not made confidential by section 772.318 of the Health and Safety Code. Accordingly, the sheriff's office may not withhold any of the remaining information it marked under section 552.101 on that basis.

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. 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). 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. Upon review, we find some of the remaining information, which the sheriff's office marked and we indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold all public citizens' dates of birth, the information it marked, and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.101 of the Government Code also encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208* at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279* at 1-2 (1981)

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Upon review, we find you have failed to demonstrate the remaining information identifies an informer for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 on that basis.

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 sheriff's office must withhold the motor vehicle record information it marked, and the additional information we indicated, under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the telephone numbers and addresses at issue under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone numbers and addresses furnished by a 9-1-1 service supplier. The sheriff's office must withhold all public citizens' dates of birth, the information it marked, and the information we indicated 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 it marked, and the additional information we indicated, under section 552.130 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

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Enc. Submitted documents

c: Requestor
(w/o enclosures)