



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2022

Mr. John Fleming  
County Attorney  
Nacogdoches County  
101 West Main Street, Room 230  
Nacogdoches, Texas 75961

OR2022-23377

Dear Mr. Fleming:

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# 963977.

The Nacogdoches County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual and a specified address during a defined period of time. You state you have released some information to the requestor. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.108 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."<sup>2</sup> 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

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>2</sup> 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).

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 sheriff's office to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicate the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office 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 the named individual 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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state Exhibits C-2 and D-2 pertain to closed criminal investigations that did not result in convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to Exhibit C-2 and D-2.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you marked the entire narrative portion of one of the submitted incident reports as information you seek to withhold under section 552.108. The remaining information at issue does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *See id.*

Accordingly, we determine you must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of basic information, which generally must be released, the department may withhold Exhibits C-2 and D-2 under section 552.108(a)(2) of the Government Code.

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. 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.). We note the requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the basic information we marked in Exhibit C-2 and the additional information we marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold Exhibits C-2 and D-2 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the basic information we marked in Exhibit C-2 and the additional information we marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining portions of Exhibit B.

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/mo

Ref: ID# 963977

Enc. Submitted documents

c: Requestor  
(w/o enclosures)