



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2022

Ms. Nicole A. Corr  
Counsel for the City of Colleyville  
Wood & Banowsky, P.L.L.C.  
5810 Long Prairie Road, Suite 700-220  
Flower Mound, Texas 75028

OR2022-33906

Dear Ms. Corr:

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# 981614 (Reference No. PD-22-0064).

The Colleyville Police Department (the "department"), which you represent, received a request for information pertaining to three specified incidents involving three named individuals and a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses 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. This office has found 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. United States 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. 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 understand you to assert the present request seeks all records pertaining to the named individuals. However, we find the requestor seeks information pertaining to specified incidents involving the named individuals. Because the requestor specifically asks for this information, it is not part of a compilation of any of the named individuals' criminal histories. Thus, this information is not confidential under common-law privacy as a compilation of criminal history, and the department may not withhold it under section 552.101 of the Government Code on that basis. Therefore, we will address your remaining arguments against 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. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). 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 some of the submitted information pertains to a report of alleged sexual assault. The requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Therefore, the department must withhold the information pertaining to incident number 22CP000787 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> Further, the department must withhold the public citizen's date of birth you marked in the remaining information 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 at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See*

---

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

*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 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The 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 2 (1981) (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 (1990), 515 at 4-5. 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).

The department states some of the remaining information contains the identifying information of a complainant who reported possible criminal activities to the department. We note, in some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). Upon review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the department may withhold the information you marked and the information we indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts 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, with the exception of the information we marked for release, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. However, we find the information we marked for release does not consist of motor vehicle record information subject to section 552.130. Thus, the department may not withhold the information we marked for release under section 552.130 of the Government Code.

In summary, the department must withhold the information pertaining to incident number 22CP000787 in its entirety as well as the public citizen's date of birth you marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you marked and the information we indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the information we marked for release, the department must withhold the motor vehicle record information you marked under section 552.130 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/pt

Ref: ID# 981614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)