



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2022

Ms. Lisa Wilson
City Secretary
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2022-34894

Dear Ms. Wilson:

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# 983804 (ORR# W009671).

The City of Copperas Cove (the "city") received a request for information pertaining to a named individual. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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 the *Industrial Foundation* decision. *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. The requestor asks for all information held by the city concerning a named individual. Therefore, to the extent the city maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information does not consist of a compilation of the named individual's criminal history, and the city may not withhold it under section 552.101 on that ground.

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .108(b)(2), .301(e)(1)(A). Upon review, we find the city has not submitted arguments establishing section 552.108(a)(2) or 552.108(b)(2) is applicable to the information at issue. Therefore, the city may not withhold any of the information at issue on either of those grounds.

As discussed above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. 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.). The city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.1175 of the Government Code 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. For purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf.* Gov't Code § 552.117(c) (“family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175 applies to “a current or former member 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, or the Texas military forces, as that term is defined by Section 437.001[.]” *Id.* § 552.1175(a)(15). Some of the remaining information pertains to individuals who may be subject to section 552.1175(a)(15). Thus, the city must withhold this information, a representative sample of which we have marked, under section 552.1175(a)(15) of the Government Code if it relates to an individual subject to that section and who elects to restrict access to that information in accordance with section 552.1175(b) of the Government Code. If the individual at issue either is 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 city may not withhold this information under section 552.1175(a)(15).

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 id.* § 552.130. The city must withhold the submitted driver’s license, license plate, and vehicle identification numbers and issuing states under section 552.130 of the Government Code.

In summary, to the extent the city maintains any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information at issue, a

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

representative sample of which we have marked, under section 552.1175(a)(15) of the Government Code if it relates to an individual subject to that section and who elects to restrict access to that information in accordance with section 552.1175(b) of the Government Code. The city must withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states under section 552.130 of the Government Code. The city 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/pt

Ref: ID# 983804

Enc. Submitted documents

c: Requestor
(w/o enclosures)