



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2015

Mr. G. Brian Garrison  
Assistant District Attorney  
County of Dallas  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2015-12805

Dear Mr. Garrison:

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# 568641.

The Dallas County Criminal District Attorney's Office (the "district attorney's office") received a request for eight categories of information pertaining to six specified cases against a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks only police reports, arrest reports, offense reports, investigative reports and memos, photographs, complainant and witness statements, presentencing investigation reports, and correspondence to and from the district attorney's office pertaining to the six specified cases. You have submitted documents that do not consist of these specific pieces of information. Thus, the submitted documents that do not consist of the information requested, which we have marked and noted, are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release that information in response to the request.

Next, we must address the district attorney's office's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office

and state the exceptions that apply within ten business days of receiving the written request for information. *See* Gov't Code § 552.301(b). You inform us the requestor sent a request for information to the district attorney's office via facsimile on March 22, 2015. The Act requires a request for public information sent by facsimile be submitted to the officer for public information or that person's designee. *Id.* § 552.301(c). Upon review of the communication at issue, we determine the request for information was not sent by the requestor to the public information officer of the district attorney's office or the officer's designee. *See id.* (stating that a written request includes a request in writing that is sent to the officer for public information, or the person designated by that officer, by e-mail or facsimile). Thus, we find the requestor's correspondence of March 22, 2015, was not a valid request for purposes of the Act, and the district attorney's office did not violate the procedural requirements of section 552.301 of the Government Code by not responding to the facsimile. *See generally id.* § 552.301 (enumerating the responsibilities a governmental body incurs upon receipt of a written request for information that it wishes to withhold). However, because you have requested a decision on the submitted information and otherwise treated the request as having been properly submitted, we will consider the district attorney's office's arguments against disclosure of 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You argue some of the responsive information is subject to chapter 261 of the Family Code. We note the information at issue pertains to case of failure to register as a sex offender. Upon review, we find you have failed to demonstrate how any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes

of Fam. Code ch. 261). Therefore, the district attorney's office may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we note some of the submitted photographs are contained within sex offender registration information subject to article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the Texas Department of Public Safety outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Although you claim this information is excepted under section 552.108 of the Government Code, we note information specifically made public by statute may not be withheld under the general exceptions to public disclosure in the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, the district attorney's office must release the photographs subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.

Section 552.108 of the Government Code states, in pertinent 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 required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(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:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. However, a party is not prevented from requesting specific documents or categories of documents relevant to issues in a pending case, even though some or all of the documents may be contained in an attorney's files. *National Union*, 863 S.W.2d at 461.

You claim the instant request for information seeks the district attorney's office's entire prosecution files for the specified cases. Upon review, we find the requestor seeks specific categories of information related to the specified cases. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the district attorney's office's entire prosecution files. As a result, the district attorney's office

may not withhold the information at issue under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also argue the information at issue was created or assembled in anticipation of or in the course of preparing for criminal litigation and reflects the mental impressions and legal reasoning of prosecutors in the district attorney's office. Upon review, we find you have demonstrated a portion of the information at issue, which we have marked, was prepared by an attorney representing the state in the course of preparing for criminal litigation and reflects the mental impressions and legal reasoning of the attorney. Thus, the district attorney's office may withhold the information we marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, we find you have failed to demonstrate how any of the remaining responsive information is protected by sections 552.108(a)(4) and 552.108(b)(3), and the district attorney's office may not withhold the remaining information at issue on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find some of the remaining responsive information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney's office must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. However, we find you have not demonstrated how any portion of the remaining information at issue consists of CHRI for purposes of chapter 411 of the Government Code, and the district attorney's office may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, "[a] biometric identifier in the

possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Upon review, we find the remaining responsive information does not include biometric identifiers. Accordingly, the district attorney’s office may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find a portion of the remaining responsive information, which we have marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the district attorney’s office must withhold the marked mental health record under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

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 doctrine of common-law privacy protects a compilation of an individual’s criminal history, which 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) (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 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision No. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). However, the requestor is an attorney for the named individual, who is one of the individuals whose privacy interest is at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her client that would otherwise be confidential under common-law privacy. Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district attorney's office may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find you have failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district attorney's office may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

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. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the district attorney's office must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the district attorney's office must withhold the bank account number we have marked under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). In this instance, the submitted information includes the requestor's social security number. We note section 552.147 is based on privacy principles. *See id.* § 552.023(a); ORD 481 at 4. Thus, the requestor has a right of access to her client's social security number pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.147 of the Government Code. The district attorney's office may withhold the remaining social security numbers within the responsive information under section 552.147 of the Government Code.<sup>1</sup>

In summary, the district attorney's office may withhold the information we marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The district attorney's office must withhold (1) the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code and federal law, (2) the mental health record we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, (3) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (4) the motor vehicle record information we marked under section 552.130 of the Government

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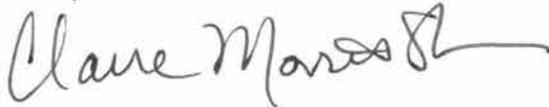
<sup>1</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Code, and (5) the bank account number we marked under section 552.136 of the Government Code. The district attorney's office may withhold the social security numbers that do not belong to the requestor's client under section 552.147 of the Government Code. The district attorney's office must release the remaining responsive information.<sup>2</sup>

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 568641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.