



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2015

Mr. Ricardo Gonzalez
Lieutenant
City of Laredo
Laredo Police Department
4712 Maher Avenue
Laredo, Texas 78041

OR2015-19258

Dear Mr. Gonzalez:

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# 579387 (Laredo Reference No. W005082-062615).

The Laredo Police Department (the "department") received a request for information pertaining to three specified incident numbers, a named individual, and a specified address. You state you have released some information to the requestor. You indicate the department will redact certain information under section 552.136(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 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." 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

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the requestor is seeking a criminal history compilation of the individual named in the request. However, the individual at issue is the requestor's client. Thus, the requestor is the authorized representative of the individual at issue and has a special right of access to this individual's information. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, none of the submitted information may be withheld as a compilation of criminal history under section 552.101 of the Government Code.

We note the submitted information contains the date of birth of a public citizen other than the requestor's client. As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

²Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Gov't Code* § 552.102(a).

We note you have redacted some information under section 552.130(c) of the Government Code.³ 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. However, as noted above, the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold the requestor's client's motor vehicle record information from this requestor under section 552.130 of the Government Code.

In summary, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.⁴

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, 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁴Because the requestor has a special right of access to some of the information being released, the department must seek another ruling from this office if it receives another request for this information from a different requestor.

Ref: ID# 579387

Enc. Submitted documents

c: Requestor
(w/o enclosures)