



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2015

Mr. Ramit Plushnick-Masti
Public Information Officer
Houston Forensic Science Center
1200 Travis Street, 20th Floor
Houston, Texas 77002

OR2015-20287

Dear Mr. Plushnick-Masti:

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# 580929 (PIA 07012015).

The Houston Forensic Science Center (the "center") received a request for all records related to multiple specified Houston Police Department (the "department") incident reports submitted to the center. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted eighteen of the requested reports to this office. We assume, to the extent any remaining requested information existed on the date the center received the request, the center has released it. If the center has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after

September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find Exhibits 12, 13, 18, and 20 pertain to juvenile suspects who were ten years of age or older and under seventeen years of age at the time of the incident that is the subject of the submitted report. Further, this information involves delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibits 12, 13, 18, and 20 are confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the center must withhold Exhibits 12, 13, 18, and 20 under section 552.101 of the Government Code. However, Exhibit 19 pertains to a suspect who was seventeen years of age at the time of the reported conduct. Thus, we find Exhibit 19 does not pertain to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time the incident occurred. Therefore, the center may not withhold Exhibit 19 under section 552.101 in conjunction with 58.007(c).

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments

explaining why exceptions raised should apply to information requested). This office has concluded section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody of information related to a concluded criminal case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information is related to a criminal case that has reached a conclusion other than a conviction or a deferred adjudication and a representation from a law enforcement entity that it wishes to have the information withheld.

You state, and provide documentation showing, the department objects to disclosure of Exhibits 2 through 11 and 14 through 16A because each relates to a case that was dismissed. Thus, we understand the information at issue pertains to criminal investigations that concluded in results other than convictions or deferred adjudications. Based on these representations and our review, we agree section 552.108(a)(2) of the Government Code is applicable to the information at issue. Accordingly, the center may withhold Exhibits 2 through 11 and 14 through 16A under section 552.108(a)(2) of the Government 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. 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.

Additionally, 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.¹ *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. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. See Open Records Decision Nos. 542 (1990), 470 at 4, 444 at 5-6 (1986), 432 at 2 (1984). Additionally, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Therefore, information relating to a deceased individual may not be withheld on common-law privacy grounds.

Upon review, we conclude the information we have marked in Exhibit 19 meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the center must withhold all living public citizens' dates of birth and the information we have marked in Exhibit 19 under section 552.101 of the Government Code in conjunction with common-law 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.² Gov't Code § 552.130. Accordingly, the center must withhold the motor vehicle record information we have marked in Exhibit 19 under section 552.130 of the Government Code.

In summary, the center must withhold Exhibits 12, 13, 18, and 20 under section 552.101 in conjunction with section 58.007(c) of the Family Code. The center may withhold Exhibits 2 through 11 and 14 through 16A under section 552.108(a)(2) of the Government Code. The center must withhold all living public citizens' dates of birth and the information we have marked in Exhibit 19 under section 552.101 of the Government Code in conjunction with common-law privacy. The center must withhold the motor vehicle record information we have marked in Exhibit 19 under section 552.130 of the Government Code. The remaining information must be released.

¹Section 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).

²The 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).

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 580929

Enc. Submitted documents

c: Requestor
(w/o enclosures)