



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 13, 2015

Ms. Yahitza Nunez  
Assistant Criminal District Attorney  
Hays County District Attorney's Office  
Hays County Government Center  
712 South Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2015-23881

Dear Ms. Nunez:

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# 593226 (PIR Nos. 15-0671 and 15-0670).

The Hays County Criminal District Attorney's Office (the "district attorney's office") received two requests for a specified report involving a named individual. You state you have released some information. 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 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) (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 that 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.

You seek to withhold the submitted information on the grounds that it requires the district attorney's office to compile unspecified criminal history records. Upon review, however, we find the requestor is seeking a specific incident report. Thus, the request does not require the district attorney's office to compile an individual's criminal history and does not implicate the privacy interests of the named individual. Accordingly, the submitted report may not be withheld under section 552.101 on the basis of the named individual's privacy interests in a compilation of his criminal history.

As noted above section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy. The remaining information must be released.<sup>1</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

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<sup>1</sup>We note the information being released contains the requestors' dates of birth, to which the requestors have a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). If the district attorney's office receives another request for this particular information from a different requestor, then the district attorney's office should again seek a decision from this office.

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 cursive script that reads "Britni Ramirez". The signature is written in black ink and is positioned above the typed name.

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 593226

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)