



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2016

Mr. Richard A. McCracken
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-08322

Dear Mr. McCracken:

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# 605406 (Fort Worth PIR No. W048878).

The Fort Worth Police Department (the "department") received a request for all information relating to a named individual and two specified incidents. The department released some of the requested information and claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed 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 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) (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 present request in part seeks unspecified law enforcement records pertaining to the named individual. This portion of the request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, other than the submitted report pertaining to one of the specified incidents, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a representative of the United States Probation Office for the Southern District of Texas (the "probation office"). Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety ("DPS") any criminal history record information ("CHRI") maintained by DPS about a person. *See* Gov't Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). We understand the requestor represents a criminal justice agency. *See id.* § 411.082(3)(A) (defining "criminal justice agency" as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice"). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, the requestor is authorized to obtain CHRI from the department

pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. See Gov't Code §§411.083(c), .087(a)(2).

Although it appears the requestor is engaged in the administration of criminal justice under chapter 411, to the extent the information at issue exists, we are unable to determine whether the requestor intends to use any CHRI at issue for a criminal justice purpose. Consequently, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, and the department determines the requestor intends to use the CHRI for a criminal justice purpose, we conclude the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. See *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, to the extent it exists, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then the requestor does not have a right of access to any CHRI under section 411.089. In that event, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Next, we address the department's arguments for the submitted report pertaining to the specified incident occurring on May 9, 2011, that is not considered to be part of the named person's criminal history compilation. The department asserts the dates of birth of public citizens and the sexual assault victim's identifying information are confidential under section 552.101 of the Government Code in conjunction with the common-law privacy standard as stated above. This office has held information tending to identify a sexual assault victim is private information that must be withheld under common-law privacy. Open Records Decision Nos. 393 (1983), 339 (1982). Thus, the department must withhold the sexual assault victim's real name pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Furthermore, 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. *Id.* 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-

¹As our ruling is dispositive, we need not address the department's remaining argument against disclosure.

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 *Tex. 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, except for the sexual assault victim's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Because the sexual assault victim has been de-identified, her privacy interest in her date of birth is sufficiently protected, and the department may not withhold it under common-law privacy.

Lastly, the department asserts section 552.130 of the Government Code excepts from public disclosure the motor vehicle record information in the specified report. Section 552.130 excepts from disclosure information relating to a driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Thus, the department must withhold the driver's license information it marked under section 552.130.

In summary, in regard to the specified report, the department must withhold 1) the sexual assault victim's real name and the dates of birth of identifiable persons under section 552.101 of the Government Code in conjunction with common-law privacy and 2) the driver's license information it marked under section 552.130 of the Government Code.³ To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, and the department determines the requestor intends to use the CHRI for a criminal justice purpose, the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions and withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, then to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

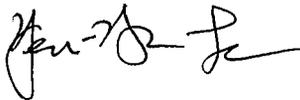
²Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

³We note the specified report contains a social security number. 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 under the Act. Gov't Code § 552.147(b).

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, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 605406

Enc. Submitted documents

c: Requestor
(w/o enclosures)