



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 4, 2016

Ms. Monique Campbell  
Records Custodian  
Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2016-10084

Dear Ms. Campbell:

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# 608655.

The Leander Police Department (the "department") received a request for all calls to a specified address involving a named individual and the requestor during a specified time period. You state you have released some information to the requestor. 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.

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. This section 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. 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.

Upon review, we find the present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find this part of the request generally implicates the named individual's right to privacy. However, we note the requestor also asks for information held by the department concerning herself. This part of the request seeks specified records involving the requestor. Further, the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 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). Accordingly, with the exception of law enforcement records involving the requestor, 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. We note, however, you have submitted law enforcement records that either involve the requestor or do not list the named individual as a suspect, arrestee, or criminal defendant. This information is not confidential under common-law privacy as a criminal history compilation, and the department may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information.

Next, we note the submitted information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly, the department may not withhold the court-filed document in the submitted information, which we have marked, under section 552.108. As you raise no other exceptions to disclosure of the marked court-filed document, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information in report numbers 15-2033 and 15-2090 relate to pending investigations in which the statute of limitations has not run. You also state release of that information would interfere with the investigation and prosecution of the case. Based upon these representations, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the remaining information in report numbers 15-2033 and 15-2090 under section 552.108(a)(1) of the Government Code.

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. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You state report number 15-2100 was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find report number 15-2100 is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the submitted information, but the requestor is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to report number 15-2100 under section 261.201(k). *Id.* § 261.201(k). The department must withhold report number 15-2100 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 683. 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. 03-13-00546-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.<sup>1</sup> *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. We note the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); ORD 481 at 4. Thus, with the exception of the requestor’s date of birth, the department must

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<sup>1</sup>Section 552.102(a) exempts 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).

withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand you have redacted some motor vehicle record information under section 552.130(c) of the Government Code.<sup>2</sup> 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(a). The requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4 (1987). Upon review, we find with the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have redacted, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of law enforcement records involving the requestor, to the extent the department maintains law enforcement records depicting the 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. With the exception of the marked court-filed document subject to section 552.022 of the Government Code and basic information, which must be released, the department may withhold report numbers 15-2033 and 15-2090 under section 552.108(a)(1) of the Government Code. The department must withhold report number 15-2100 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. With the exception of the requestor'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. With the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have redacted, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</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.

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

<sup>3</sup>Because the requestor has a right of access to some of the information being released, the department must again seek a decision from this office if it receives a request for this information from a different requestor. *See* Fam. Code § 261.201(k); Gov't Code § 552.023.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/bw

Ref: ID# 608655

Enc. Submitted documents

c: Requestor  
(w/o enclosures)