



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Mr. Omar A. De La Rosa
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-10737

Dear Mr. De La Rosa:

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# 609598 (City Case # 16-1026-7166).

The El Paso Police Department (the "department") received a request for records from a specified time period pertaining to three named individuals, including the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it pertains to incidents that did not occur within the time period specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

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."

¹Although you also raise section 552.101 of the Government Code in conjunction with constitutional privacy, you provide no arguments explaining how this doctrine applies to the information at issue. Therefore, we assume you no longer assert this doctrine. See Gov't Code §§ 552.301, .302.

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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

Upon review, we find the present request, in part, requires the department to compile unspecified law enforcement records concerning the named individuals other than the requestor. We find this part of the request generally implicates the other named individuals' rights to privacy. However, we note the requestor also seeks police reports involving himself. This part of the request seeks specified records involving the requestor and does not implicate the other named individuals' rights to privacy. Further, the requestor has a special right of access to his own information that would ordinarily be withheld to protect his privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, information relating to the requestor may not be withheld from him as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. We also note the department has submitted information that does not list the other named individuals as suspects, arrestees, or criminal defendants. This information does not consist of a compilation of the other named individuals' criminal histories, and the department may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Accordingly, the department may not withhold the responsive information as a criminal history compilation under section 552.101 in conjunction with common-law privacy.

Next, we note some of the responsive information consists of court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides for the required public disclosure of "information that is also contained in a public court record[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). This information must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.101 of the

Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, the department may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, you also raise section 552.101 in conjunction with section 261.201 of the Family Code, which makes information confidential under law; thus, we will address this argument against disclosure of the information at issue. We will also address your arguments for the remaining responsive information not subject to section 552.022(a)(17).

Section 552.101 also encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

Fam. Code § 261.201(a). Upon review, we find report 15-199817 was used or developed in an investigation conducted by the department under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report 15-199817 is confidential under section 261.201(a), and the department must withhold it in its entirety, as well as the information we have marked, under section 552.101.²

As previously discussed, section 552.101 of the Government Code encompasses common-law privacy, which is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987).*

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.³ *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 his own information that would ordinarily be withheld to protect his privacy interests, including his own date of birth, pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked, as well as the dates of birth of public citizens other than the requestor in the information not subject to section 552.022(a)(17) of the Government Code, under section 552.101 in conjunction with common-law privacy. However, we find you have not demonstrated the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold the remaining responsive information under section 552.101 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.⁴ *See* Gov't Code § 552.130(a). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. The department must withhold the motor vehicle record information of an individual other than the requestor we have marked under section 552.130.

³Section 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).

⁴The 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).

In summary, the department must withhold the information we have marked and report 15-199817 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked and the dates of birth of private citizens other than the requestor in the remaining information not subject to section 552.022(a)(17) of the Government Code under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.⁵

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 609598

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information being released contains private information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.