



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2016

Ms. Susan Camp-Lee
Counsel for the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-8986

OR2016-16045

Dear Ms. Camp-Lee:

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# 618553.

The Round Rock Police Department (the "department"), which you represent, received a request for information concerning offenses at a specified address. You state the department will redact information subject to sections 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ You claim portions of the submitted information are 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 section 411.192 of the Government Code, which

¹Sections 552.130 and 552.136 of the Government Code authorize a governmental body to redact motor vehicle record information and access device numbers, respectively, without a ruling from this office; but the governmental body must provide notice to the requestor. *See* Gov't Code §§ 552.130(c)–(e), .136(c)–(e). Open Records Decision No. 684 (2009) authorizes a governmental body to redact without a ruling e-mail addresses of members of the public under section 552.137 of the Government Code, unless the owner of the address consents to its release. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without a ruling from this office. *See id.* § 552.147(b).

governs the release of information maintained by the Texas Department of Public Safety (“DPS”) concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)–(b). You marked information that consists of concealed handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the DPS maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090–.127. Some of the information you marked consists of confidential CHRI. Accordingly, the department must withhold the CHRI under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office determined some kinds of medical information and personal financial information unrelated to a financial transaction between an individual and a governmental body are protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990), 455 (1987). 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. In considering whether a member of the public’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.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 members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy under section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find some of the information you marked is not highly intimate or embarrassing. The department may not withhold that information, which we indicated, under section 552.101 of the Government Code. The department must withhold the remaining information you marked, the information we marked, and dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. The department must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of the information we indicated, the department must withhold the information

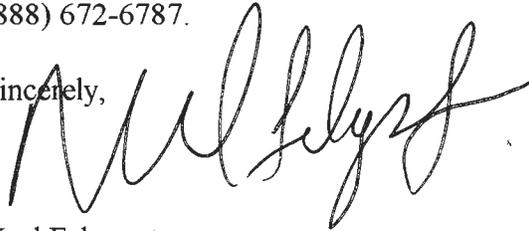
²Section 552.102(a) exempts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

it marked, the information we marked, and the dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 618553

Enc. Submitted documents

c: Requestor
(w/o enclosures)