



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2016

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2016-19709

Dear Ms. Thomas:

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# 624755.

The Temple Police Department (the "department") received a request for information pertaining to a named individual. You claim some of 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. 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 demonstrated. *See id.* at 681-82. A compilation of an individual's criminal history record information 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.

The request seeks unspecified records pertaining to the named individual. Thus, we find the request requires the department to compile the named individual's criminal history. However, we note the requestor has provided a signed authorization from the named individual for release of the information at issue. Thus, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to the named individual that would otherwise be withheld to protect her privacy in a compilation of her criminal history. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); *see* Open Records Decision No. 481 at 4 (1987). Accordingly, the department may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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.

(1) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (1)(2). Report numbers 93050576 and 09000226 and the information in Exhibit C were used or developed in investigations under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 of Family Code). Accordingly, we find this information is generally confidential under section 261.201(a) of the Family Code. However, the requestor states she is conducting a court ordered social study and has provided an authorized release from one of the parents of the child victims at issue. However, the child victim listed in Exhibit C is now an adult. Therefore, we determine the requestor does not have a right of access to Exhibit C under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Additionally, we note this parent is not alleged to have committed the alleged or suspected abuse in report numbers 93050576 and 09000226. *See id.* § 261.201(k). Thus, these reports may not be withheld from this requestor on the basis of section 261.201(a). *Id.* However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether the information at issue is otherwise excepted under the Act.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must

¹As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure. Further, because the information at issue does not contain criminal history record information (“CHRI”) of the individual named in the request for information, we do not address whether the requestor, who states she has been ordered to complete a court-ordered social study involving the individual named in the request, has a right of access to CHRI in Exhibit C under sections 411.087 and 411.1285(a) of the Government Code. *See Gov't Code* §§ 411.087(a)(2), .1285(a)

demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 09004352 and 09000226 relate to closed cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to report numbers 09004352 and 09000226.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the department may generally withhold report numbers 09004352 and 09000226 under section 552.108(a)(2) of the Government Code.

However, as noted above, the requestor states she is conducting a court-ordered social study. Accordingly, the requestor may have a right of access to portions of report number 09004352 pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides, in part, that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] [CHRI] that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”² *See* Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

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

²A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). However, a domestic relations office may only receive CHRI if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The requestor states she is conducting a court-ordered social study regarding the individual named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the department determines the CHRI within report number 09004352 relates to a person who is a party to a proceeding in which services are being provided pursuant to chapter 203 of the Family Code, then, pursuant to section 411.1285(a), the department must make available to the requestor information pertaining to that person that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, may withhold the remaining information in report number 09004352 under section 552.108(a)(2) of the Government Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines the CHRI within report number 09004352 does not relate to a person who is a party to a proceeding in which services are being provided pursuant to chapter 203 of the Family Code, then with the exception of basic information, the department may withhold report number 09004352 under section 552.108(a)(2) of the Government Code. In either instance, with the exception of basic information, the department may withhold report number 09000226 under section 552.108(a)(2) of the Government Code.³

As noted above, section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.* 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* 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). 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

³We note as report number 09000226 does not contain any CHRI of the individual named in the request, we need not discuss the applicability of section 411.1285 to this information.

the negligible public interest in disclosure.⁴ *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. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the dates of birth of the named individual and her minor children, the department must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. However, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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.⁵ Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report number 09000226 under section 552.108(a)(2) of the Government Code. If the department determines the CHRI within report number 09004352 relates to a person who is a party to a proceeding in which services are being provided pursuant to chapter 203 of the Family Code, then, pursuant to section 411.1285(a), the department must make available to the requestor information pertaining to that person that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, may withhold the remaining information in report number 09004352 under section 552.108(a)(2) of the Government Code. If the department determines the CHRI within report number 09004352 does not relate to a person who is a party to a proceeding in which services are being provided pursuant to chapter 203 of the Family Code, then with the exception of basic information, the department may withhold report number 09004352 under section 552.108(a)(2) of the Government Code.

⁴Section 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).

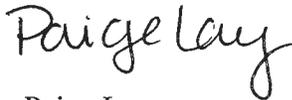
⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

With the exception of the dates of birth of the named individual and her minor children, the department must withhold all public citizens' dates of birth and the information we have marked 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 department must release the remaining information.⁶

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 624755

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, the requestor has a right of access to the named individual and her minor children's social security numbers. *See id.* § 552.023(a); ORD 481 at 4. We also note the requestor has a special right of access to some of the information being released in this instance. If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.