



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 6, 2016

Ms. Andrea D. Russell  
Counsel for the City of Benbrook  
Taylor Olson Adkins Sralla Elam L.L.P.  
I-30 at Bryant Irvin Road  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2016-20023

Dear Ms. Russell:

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# 625277.

The Benbrook Police Department (the "department"), which you represent, received two requests from the same requestor for information involving two named individuals at two specified addresses during two specified time periods. You state you will redact some information pursuant to sections 552.130(c) and 552.147 of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). 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. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of

from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>2</sup> 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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 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. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. In this instance, the request seeks unspecified law enforcement records concerning the individuals named in the request. This request implicates the named individuals’ rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting either 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. You have submitted records that do not list either named individual as a suspect, arrestee, or criminal defendant. This information is not part of a compilation of the named individuals’ criminal histories, and it may not be withheld under section 552.101 of the Government Code on that basis. Therefore, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). Section 58.007 provides, in pertinent part, as follows:

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information without the necessity of requesting an attorney general opinion.

<sup>2</sup>Although you initially raised sections 552.107 and 552.111 of the Government Code, you do not argue these exceptions in the information submitted to this office pursuant to section 552.301(e) of the Government Code. Therefore, we presume you no longer assert section 552.107 or 552.111. *See* Gov’t Code §§ 552.301, .302.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). You assert the information in Exhibit B-3 is confidential under section 58.007(c). Upon review, we find most of the information in Exhibit B-3 consists of law enforcement records involving a juvenile runaway that occurred after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). None of the exceptions in section 58.007 apply. Thus, with the exception of the information we have marked, Exhibit B-3 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, we find you have not demonstrated any of the remaining information, which we have marked, consists of juvenile law enforcement records for purposes of section 58.007(c) of the Family Code. Therefore, the department may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must 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). We understand Exhibit B-1 pertains to active criminal investigations or prosecutions. Based on your 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 Exhibit B-1.

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 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). We understand Exhibit B-2 pertains to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to Exhibit B-2.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identification of a complainant, but does not include the identity of a victim unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code and may withhold Exhibit B-2 under section 552.108(a)(2) of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test described above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate or 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). 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.<sup>3</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals

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<sup>3</sup>Section 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).

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 some of the reports at issue contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the reports from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the reports we have marked in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the additional information we have marked, along with all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public interest; thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

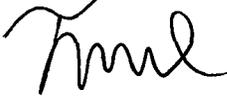
In summary, to the extent the department maintains law enforcement records depicting either named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked, the department must withhold Exhibit B-3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, which must be released, the department may withhold Exhibit B-1 under section 552.108(a)(1) of the Government Code and may withhold Exhibit B-2 under section 552.108(a)(2) of the Government Code. The department must withhold the reports we have marked in their entireties, as well as the additional information we have marked and all public citizens' dates of birth, 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 "Tim Neal". The signature is fluid and cursive, with the first letter "T" being particularly large and stylized.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 625277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)