



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2014

Ms. Heather Stebbins  
County Attorney  
County of Kerr  
700 Main Street, Suite BA-103  
Kerrville, Texas 78028

OR2014-20205

Dear Ms. Stebbins:

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# 542518.

The Kerr County Attorney's Office (the "county attorney's office") received a request for all police reports related to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the obligations of the county attorney's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The county attorney's office received the request for information on August 14, 2014. Accordingly, you were required to provide the information required by section 552.301(b) by August 28, 2014. However, you submitted the required information in an envelope meter-marked September 3, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the county attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. You raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. We note the responsive documents include information subject to section 552.130 of the Government Code, which also provides a compelling reason that overcomes the presumption of openness.<sup>1</sup> Accordingly, we will address the applicability of sections 552.101 and 552.130 to the submitted information.

Section 552.101 of the Government Code excepts “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 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) (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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). We further note information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request requires the county attorney's office to compile unspecified law enforcement records concerning the named individual, thus implicating the named

---

<sup>1</sup>The 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).

individual's right to privacy. Therefore, to the extent the county attorney's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the county attorney's office must withhold any such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individual's criminal history. We note, however, you have submitted documents that do not list the named individual as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and, thus, does not implicate the named individual's right to privacy. Accordingly, we will consider the raised exceptions for this information.

Common-law privacy also protects the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the county attorney's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, to the extent the county attorney's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the county attorney's office must withhold any such information under section 552.101 in conjunction with common-law privacy. The county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county attorney's office must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Joseph Behhke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 542518

Enc. Submitted documents

c: Requestor  
(w/o enclosures)