



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2016

Ms. Crystal Koonce
Open Records
County of Williamson
508 South Rock Street
Georgetown, Texas 78626

OR2016-02126

Dear Ms. Koonce:

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# 595760.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to a specified incident and certain information pertaining to a specified address during a specified time period.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.² 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

¹We note the requestor narrowed the scope of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Although you do not cite to section 552.147 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

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. 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. However, this request does not seek a compilation of an individual's criminal history; rather, the request is for information pertaining to a specified incident and information pertaining to a specified address during a specified time period. Such a request does not implicate an individual's common-law right to privacy. Accordingly, the sheriff's office may not withhold any of the submitted information as criminal history compilation under section 552.101 in conjunction with common-law privacy.

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 reasonably 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). You state report numbers 2015-199971, 2015-09-00472, and 2015-200071 and the information you marked relate to pending criminal investigations. Based on your representations and our review, we find 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 report numbers 2015-199971, 2015-09-00472, and 2015-200071 and the information you marked.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the sheriff's office may withhold report numbers 2015-199971, 2015-09-00472,

and 2015-200071 and the information you marked under section 552.108(a)(1) of the Government Code.³

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. *See* Gov't Code § 552.130(a). Upon review, we find some of the submitted video recordings you marked contain information subject to section 552.130. You state the sheriff's office does not have the technological capability to redact the motor vehicle record information from the video recordings at issue. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you marked, the submitted video recordings you marked in their entirety, and the additional video recording we have marked in its entirety under section 552.130 of the Government Code.⁴ *See* Open Records Decision No. 364 (1983).

You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the information you marked reveals the identity of an informer who reported an alleged violation of law to the sheriff's office. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review of the information at issue, we conclude most of the information you marked identifies a complainant. However, some of the information at issue, which we have marked for release, does not identify a complainant and may not be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Accordingly, with the exception of the information we have marked for release, the sheriff's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

You argue some of the remaining information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *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). Further, we note the remaining information contains dates of birth of members of the public. 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.⁵ *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.

Upon review, we find some of the information you marked and the additional information we have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold all public citizens' dates of birth within the remaining information and, with the exception of the information we have marked for release, the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We further find the video recording we have marked contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You inform us the sheriff's office does not possess the technological capability to redact information from the video recording. Thus, we find the sheriff's office must withhold the entirety of the video recording we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983). 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.

⁵Section 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).

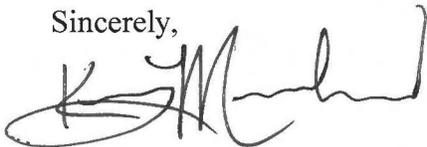
Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Upon review, we find the sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code.

In summary, with the exception of basic information, the sheriff's office may withhold report numbers 2015-199971, 2015-09-00472, and 2015-200071 and the information you marked under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information you marked, the submitted video recordings you marked in their entirety, and the additional video recording we have marked in its entirety under section 552.130 of the Government Code. With the exception of the information we have marked for release, the sheriff's office may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The sheriff's office must withhold public citizens' dates of birth within the remaining information and, with the exception of the information we have marked for release, the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, the sheriff's office must withhold the entirety of the video recording we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code. The sheriff's office 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 'Kenny Moreland', written over a white background.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 595760

Enc. Submitted documents

c: Requestor
(w/o enclosures)