



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2016

Ms. Alexis G. Allen
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2016-02421

Dear Ms. Allen:

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# 596108 (City Reference #74265).

The Lancaster Police Department (the "department"), which you represent, received a request for all reports for calls involving two specified addresses over a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not involve either of the specified addresses. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.¹

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,

¹As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

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. 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 two specified addresses. Such a request does not implicate an individual's common-law right to privacy. Accordingly, the department may not withhold 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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or E-I of the Government Code. *Id.* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We also note records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information

does not include driving record information). Upon review, we find the information we have marked constitutes CHRI which the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.²

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” includes a person’s name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). DPS is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state portions of the remaining information were obtained by the department from DPS. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information, and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the department must withhold the personal information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, no portion of the remaining information at issue consists of personal information about any person obtained by the department in connection with a motor vehicle record. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of 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. As previously discussed, 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. Reporters Comm.*, 489 U.S. at 764. Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov’t Code* § 411.082(2)(B). Further, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*. This office has also concluded some kinds of personal financial information not relating to the financial transaction between

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure. Furthermore, we note individuals may obtain their own criminal record history information from DPS. *See Gov’t Code* § 411.083(b)(3).

an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990).

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.³ *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 portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we have marked, along with all identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We note the information at issue contains private information, including dates of birth, relating to the requestor and her spouse. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the requestor has a right of access to her own private information, including her date of birth, as well as her spouse's private information, including his date of birth, if she is acting as her spouse's authorized representative. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the department may not withhold the requestor's own information from her under common-law privacy. Furthermore, if the requestor is acting as her spouse's authorized representative, then the department may not withhold any private information relating to the requestor's spouse, including his date of birth, under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the department must withhold the private information relating to the requestor's spouse, along with his date of birth, under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the information we have marked related to the remaining individuals, other than the requestor, along with all remaining identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy.

³Section 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).

You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.⁴ 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. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her own motor vehicle record information. In addition, as noted above, the requestor may be her spouse's authorized representative, and may have a right of access to information pertaining solely to him that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold motor vehicle record information relating to the requestor. Furthermore, if the requestor is acting as her spouse's authorized representative, then the department may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the department must withhold any motor vehicle record pertaining solely to the requestor's spouse under section 552.130. In any event, the department must withhold the motor vehicle record information pertaining to any other individual under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the personal information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. If the requestor is acting as her spouse's authorized representative, then the department may not withhold any private information relating to the requestor's spouse, including his date of birth, under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as her spouse's authorized representative, then the department must withhold the private information relating to the requestor's spouse we have marked, along with his date of birth, under section 552.101 in conjunction with common-law privacy. In any event, the department must withhold the information we have

⁴Section 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).

marked related to the remaining individuals other than the requestor, along with all remaining identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as her spouse's authorized representative, then the department may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. If the requestor is not acting as her spouse's authorized representative, then the department must withhold any motor vehicle record pertaining solely to the requestor's spouse under section 552.130. In any event, the department must withhold the motor vehicle record information pertaining to the remaining individuals, other than the requestor, under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department must release the remaining responsive information to this requestor.⁵

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

⁵We note the information being released includes the social security numbers of other individuals. 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* Gov't Code § 552.147(b). However, if the requestor is acting as her spouse's representative, she has a right of access to his social security number under section 552.023 of the Government Code. *See generally id.* § 552.023(a); ORD 481 at 4. We also note the requestor has a right of access to some of the additional information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for this information from a different requestor, the department must seek another ruling from this office.

Ref: ID# 596108

Enc. Submitted documents

c: Requestor
(w/o enclosures)