



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 10, 2016

Mr. Brendan W. Guy  
Assistant Criminal District Attorney  
County of Victoria  
205 North Bridge Street, Suite 301  
Victoria, Texas 77901-8085

OR2016-05560

Dear Mr. Guy:

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# 602475.

The Victoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor and three other named individuals since 2004. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions 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 (1) contains highly intimate or embarrassing fact, the publication of which would be highly objectionable to a reasonable person, and (2) 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. 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 requestor asks, in part, for all

information held by the sheriff's office concerning named individuals. Nevertheless, we find the requestor is also seeking, in part, information involving herself and the named individuals. Accordingly, this portion of the request does not implicate the named individuals' rights to privacy, and the sheriff's office may not withhold the information involving the requestor and any of the named individuals under section 552.101 on the basis of those named individuals' privacy interests in a compilation of criminal history. However, to the extent the sheriff's office maintains unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. *Id.* 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>1</sup> *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. Complaint number 81325 contains a date of birth that the sheriff's office must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). Complaint number 81325 contains a fingerprint. The sheriff's office does not inform us, and the information at issue does not indicate, section 560.002 permits the disclosure of this information. Therefore, the sheriff's office must withhold the information we have marked in complaint number 81325 under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the

---

<sup>1</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).

sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. In complaint number 81325, the sheriff's office must withhold the date of birth under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, but must release the remaining information at issue.<sup>2</sup>

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](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,



Michael Pearl  
Assistant Attorney General  
Open Records Division

MAP/eb

Ref: ID# 602475

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note the information to be released contains motor vehicle record information to which the requestor has a right of access pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 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). Therefore, if the sheriff's office receives another request for this information, section 552.130(c) authorizes the sheriff's office to redact the submitted motor vehicle record information without requesting another ruling from this office.