



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Ms. Jennifer Gonzalez
Assistant Criminal District Attorney-Civil Division
Hays County Criminal District Attorney's Office
712 Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2016-19466

Dear Ms. Gonzalez:

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# 624752 (ORR# 16-0464).

The Hays County District Attorney's Office (the "district attorney's office") received two requests: the first, received on June 17, 2016 (the "first requestor"), was for information pertaining to a specified address for a specified period of time, as well as information pertaining to two named individuals; and the second, received on July 11, 2016, from a different requestor (the "second requestor") was for reports pertaining to the welfare of two named individuals during a specified period of time. The district attorney's office claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

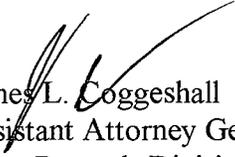
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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 first requestor asks for all information held by the district attorney’s office concerning two named individuals. Therefore, to the extent the district attorney’s office maintains any unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the district attorney’s office must withhold such information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district attorney’s office has submitted documents responsive to the first request that do not list either of the named individuals as a suspect, arrestee, or criminal defendant. Thus, this information is not confidential under common-law privacy as part of a compilation of either individual’s criminal history. Nevertheless, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district 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, we conclude the remaining information is not confidential under common-law privacy, and the district attorney’s office may not withhold it under section 552.101 on that ground. The district attorney’s office must release the remaining information that is responsive to the requests of each requestor, respectively.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 624752

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)