



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Ms. Caitlin Culpepper  
Records Supervisor  
County of Taylor  
450 Pecan Street  
Abilene, Texas 79602-1692

OR2016-19529

Dear Ms. Culpepper:

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# 624395.

The Taylor County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a named individual, including records pertaining to a specified case number. The sheriff's office states it will redact motor vehicle record information under section 552.130(c) of the Government Code.<sup>1</sup> The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>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* 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).

<sup>2</sup>We 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 exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses 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. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual’s criminal history and may not be withheld under section 552.101 on that basis.

The present request, in part, requires the sheriff’s office to compile unspecified law enforcement records concerning the individual at issue. We find this request for unspecified law enforcement records implicates the named individual’s right to privacy. Therefore, to the extent the sheriff’s office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff’s office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the sheriff’s office has submitted information that does not depict the named individual as a suspect, arrestee, or a criminal defendant. This information does not constitute a criminal history compilation protected by common-law privacy and may not be withheld on that basis under section 552.101. Additionally, records pertaining to the specified case number may not be withheld as part of a compilation of the named individual’s criminal history because such records were specifically requested. Accordingly, we will address the sheriff’s office’s arguments against disclosure of the remaining requested information.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See* Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprint we have marked constitutes a biometric identifier for purposes of section 560.003 of the Government Code. Accordingly, the sheriff’s office must withhold

the marked fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Upon review, we find the information we have marked involves juveniles engaged in delinquent conduct on or after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 of the Family Code apply to this information. Thus, the information we have marked is confidential under section 58.007(c) of the Family Code, and the sheriff’s office must withhold it under section 552.101 of the Government Code.<sup>3</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff’s office states some of the

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<sup>3</sup>As our ruling is dispositive, we need not address the sheriff’s office’s arguments against disclosure of this information.

remaining information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information does not include dates of birth. *See* ORD 127 at 3-4. Therefore, with the exception of basic information, the sheriff's office may withhold the information at issue, which we have marked under section 552.108(a)(2) of the Government Code.

We note portions of the remaining information contain confidential information pursuant to common-law privacy. 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). This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefit programs, among others, protected under common-law privacy.) 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>4</sup> *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. Accordingly, the sheriff's office must withhold all public citizen's dates of birth, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>4</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).

In summary, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the marked fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold all public citizen's dates of birth, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 624395

Enc. Submitted documents

c: Requestor  
(w/o enclosures)