



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Mr. Vance Hinds
Assistant County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2016-22826

Dear Mr. Hinds:

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# 629911.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all records involving three named individuals at a specified address. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.147 of the Government Code. 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 protects information that (1) contains highly intimate or embarrassing facts, 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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) (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.

The present request, in part, requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the sheriff's office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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, however, the sheriff's office has submitted information that does not depict the named individuals as suspects, arrestees, or criminal defendants. 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. Accordingly, we will address the arguments against disclosure of the remaining requested information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Report number 99-12338 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the sheriff’s office must withhold report number 99-12338 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

Some of the remaining information is subject to 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body 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.² *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 the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff’s office

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

²Section 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).

must withhold the public citizens' dates of birth you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 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”). Accordingly, the sheriff’s office must withhold the credit card number you marked under section 552.136 of the Government Code.³

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the sheriff’s office may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, to the extent the sheriff’s office maintains unspecified law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, 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 report number 99-12338 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The sheriff’s office must withhold the public citizens’ dates of birth you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the credit card number you marked under section 552.136 of the Government Code. The sheriff’s office may withhold the social security numbers 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/>

³Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

[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 'Meagan J. Conway', with a long, sweeping horizontal line extending to the right.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 629911

Enc. Submitted documents

c: Requestor
(w/o enclosures)