



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2015

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2015-05228

Dear Mr. Grove:

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# 556662.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for (1) the personnel file and civil service file of a named officer; (2) information pertaining to any homicide cases the named officer has worked on; and (3) communications that mention the named officer, or that were sent to or received by the named officer.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for the communications that mention the named officer, or that were sent to or received by the named officer. Accordingly, to the extent any information responsive to the request for

¹You note the sheriff's office sought and received clarification of the requests. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

communications that mention the named officer, or that were sent to or received by the named officer, existed on the date the sheriff's office received the request, we assume you have released such information. If you have not released any such information to the requestor, you must do so at this time.² Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification number is a unique computer-generated number assigned to the officer for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor.

Next, we note the sheriff's office has redacted portions of the submitted information. We understand the sheriff's office has redacted portions of the submitted information under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001), motor vehicle record information pursuant to section 552.130(c) of the Government Code, and fingerprints pursuant to Open Records Decision No. 684 (2009).³ However, you do not assert, nor does our review of the records indicate, the sheriff's office has been authorized to withhold the remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the

²As we are able to make this determination, we need not address your arguments under sections 552.107(1) and 552.111 of the Government Code.

³Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 6. Section 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). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including fingerprint information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" *Id.* § 552.022(a)(1). The submitted information contains completed investigations subject to section 552.022(a)(1). The sheriff's office must release this information unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you raise section 552.103 of the Government Code for the information subject to section 552.022, this is a discretionary exception to disclosure and it does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022 may be withheld under section 552.103. You also assert the information at issue is excepted from public disclosure pursuant to a court order. Section 552.107(2) of the Government Code allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). However, section 552.022(b) provides a court may not order a governmental body to withhold from public inspection any category of information described by section 552.022(a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022(a), we conclude the sheriff's office may not withhold any of the information at issue under section 552.107(2) of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under that section for the information subject to section 552.022(a)(1). Additionally, because section 552.101 of the Government Code can provide a compelling reason against disclosure, we will consider your arguments under this section for the information at issue, as well as the remaining submitted information. Further, we note portions of the information subject to section 552.022(a)(1) are subject to sections 552.130 and 552.136 of the Government Code, which make information confidential under the Act.⁴ Therefore, we will also address the applicability of these sections to the information at issue,

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

as well as the remaining submitted information. We will also consider your arguments under sections 552.103 and 552.107(2) for the information not subject to section 552.022(a)(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.” *Id.* § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center 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.” *Id.* § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center 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). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, we find no portion of the remaining information at issue consists of confidential CHRI under chapter 411, and the sheriff’s office may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any

individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The information we have marked consists of concealed handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find the sheriff's office must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional

Health forms we marked have under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁵

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. The remaining information includes information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 forms, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code. You also seek to withhold additional information, including TCOLE Forms F-7 (Report of Education) and L-1 (Report of Appointment/License Application), under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. We therefore conclude the sheriff's office may not withhold the submitted F-7 and L-1 forms, nor any of the remaining information at issue under section 552.101 on this basis. *See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).*

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which 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:

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). We note the information at issue consists of internal investigation records pertaining to a complaint against the named officer. Records of an internal investigation do not constitute juvenile law enforcement records for the purposes of section 58.007(c) of the Family Code. Therefore, the sheriff’s office may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find report number 01-6960 was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of

age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). As you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we conclude the report number 01-6960 is confidential under section 261.201(a). Accordingly, the sheriff's office must withhold report number 01-6960 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁶

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has applied constitutional privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), this office held those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure" and this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates, and our office found "the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure." *Id.* Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 428, 430. Further, we recognized inmates had a constitutional right to visit with outsiders that could also be threatened if their names were released. See also ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; see ORD 430 (list of inmate visitors protected by constitutional privacy of

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

both inmate and visitors). Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the constitutional right to privacy.

Section 552.101 of the Government Code also encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). This office has also found common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007(c). We note the common-law right to privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll

database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff's office must withhold the employee's date of birth, a representative sample of which we have marked, under section 552.102(a) of the Government Code.

You raise section 552.107(2) for portions of the information not subject to section 552.022 of the Government Code. Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You have submitted a copy of a court order signed by a judge on February 4, 2013, in the United States District Court for the Southern District of Texas, Houston Division, in the case styled *Winfrey v. San Jacinto County*, Cause No. 4:10-cv-01896. The court order provides, in pertinent part, "[a]ny rights of access to all materials covered under Plaintiff's Request for Production number 1 shall be limited to counsel for the parties, paralegals in their employ, and any other person mutually authorized in advance of disclosure by all counsel to examine such materials." The court order further provides "[n]o person having access to material produced pursuant to this agreement shall disclose said materials to any person without further stipulation by the parties or further Order of the Court." Upon review of the information at issue, we agree a court by order has prohibited disclosure of the information at issue. You state the lawsuit is still ongoing and the protective order has not been lifted. Accordingly, the sheriff's office must withhold the information we have marked and indicated under section 552.107(2) of the Government Code.⁷

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

⁷As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state prior to the sheriff's office's receipt of this request, a lawsuit styled *Winfrey v. Pikett*, Cause No. 4:14-cv-00448, was filed and is currently pending in the United States District Court for the Southern District of Texas, Houston Division. You state the Fort Bend County is a defendant in the litigation and the county attorney represents the sheriff's office in civil litigation. Upon review of your arguments and the information at issue, we find the information at issue relates to litigation that was pending when the sheriff's office received these requests for information. Accordingly, we find the sheriff's office may withhold the information we have marked under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in 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.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state report numbers 03-15758 and 03-2545 relate to closed investigations that did not result in convictions or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to report numbers 03-15758 and 03-2545.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic

information does not include motor vehicle record information protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the sheriff's office may withhold report numbers 03-15758 and 03-2545 under section 552.108(a)(2) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. As noted above, the sheriff's office has redacted information under sections 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670. We note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Upon review, we find some of the information you have redacted is not subject to section 552.117(a)(2) and may not be withheld on that basis. Therefore, with the exception of the information we have marked for release, the sheriff's office must withhold the information you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code.

As noted above, you have redacted some information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional information subject to section 552.130. 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 id.* § 552.130. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, driver's license information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); ORD 272 at 1 (privacy rights lapse upon death). Accordingly, the sheriff's office must withhold the motor vehicle record information you redacted, and the additional motor vehicle record information, a representative sample of which we have marked, 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"). Accordingly, the

sheriff's office must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 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 411.192 of the Government Code. The sheriff's office must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we marked have under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The sheriff's office must withhold the submitted F-5 forms, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold report number 01-6960 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the constitutional right to privacy. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the employee's date of birth, a representative sample of which we have marked, under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we have marked and indicated under section 552.107(2) of the Government Code. The sheriff's office may withhold the information we have marked under section 552.103 of the Government Code. With the exception of basic information, the sheriff's office may withhold report numbers 03-15758 and 03-2545 under section 552.108(a)(2) of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information you redacted, and the additional motor vehicle record information, a representative sample of which we have marked, under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.136 of the Government Code. The sheriff's office must release the remaining information.⁸

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.

⁸We note the information being released contains social security numbers. 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).

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 556662

Enc. Submitted documents

c: Requestor
(w/o enclosures)