



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2015

Mr. J. Eric Magee
For the Victoria County Sheriff's Office
Allison, Bass, & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2015-10918

Dear Mr. Magee:

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# 565772.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for specified bail bond bondman's applications. You state the sheriff's office does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. Additionally, you indicate release of the submitted information may implicate the proprietary interests of certain third parties. Accordingly, you indicate, and have provided documentation demonstrating, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released.² *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

²The notified third parties are as follows: E-Z Bonding, ABC Bonding Company, A&A Bail Bonds, Ace Bail Bonds, Port Lavaca Bail Bond Co., Kwik Bonding, A-Action Bail Bonds, Bail Bond Hotline of Texas.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties. Thus, the third parties have not demonstrated the companies have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the sheriff's office may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.101 of the Government Code excepts “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 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 some kinds of medical information are generally highly intimate or embarrassing. *See* open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, whether financial information is of legitimate public interest, and therefore not protected by common-law privacy, must be determined on a case-by-case basis. We further note the home addresses and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy).

The submitted information includes financial information provided to the sheriff's office by individuals for the purpose of obtaining approval of bail bond licenses. Because the information was used by the sheriff's office to assess the status of bail bond licensure, we find there is a legitimate public interest in this information. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental

body). Therefore, this information is not confidential under common-law privacy and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground. However, upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 also 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, the remaining information does not constitute confidential CHRI; thus, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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 [Act].

(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. Thus, 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 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Gov't Code § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); *see also Ex parte Pruitt*, 551 S.W.2d 706; Open Records Decision Nos. 562 at 10 (1990), 531 at 2. This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See e.g.,* ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information at issue contains records of inquiries made via the Texas Law Enforcement Telecommunications System ("TLETS"). You argue release of the information will "unduly complicate law enforcement efforts that utilize the TLETS by unnecessarily exposing the investigative techniques and procedures included in these TLETS reports." We note the information at issue consists of driver's license inquiries, license plate inquiries, and warrant checks by the sheriff's office. Upon review, we find you have not demonstrated how the release of any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the information at issue under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Upon review, we find the information you have marked does not consist of e-mail addresses. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.137 of the Government Code on that basis.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the sheriff's office may withhold the social security numbers you have marked under section 552.147 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 common-law privacy. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083 and 411.192 of the Government Code. The sheriff's office must withhold the motor vehicle record information you have marked, as well as the information 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 may withhold the information you have marked under section 552.147 of the Government Code. The sheriff's office must release the remaining submitted 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](#), 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 565772

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ernest Guajardo
E-Z Bonding
2204 North Laurent
Victoria, Texas 77901
(w/o enclosures)

Mr. Osvaldo Reyes
Port Lavaca Bail Bond Co.
427 South Reynolds
Alice, Texas 78332
(w/o enclosures)

Mr. Charles Benton
ABC Bonding Company
107 North Moody Street
Victoria, Texas 77901
(w/o enclosures)

Kwik Bonding
302 East Main Street
Edna, Texas 77957
(w/o enclosures)

Mr. Warren Alkek
A&A Bail Bonds
203 North Moody
Victoria, Texas 77901
(w/o enclosures)

Mr. Bruce Embrey
A-Action Bail Bonds
P.O. Box 830065
San Antonio, Texas 78283
(w/o enclosures)

Mr. Paul Huntsberger
Ace Bail Bonds
114 North Main Street
Victoria, Texas 77901
(w/o enclosures)

Mr. Mark Tamez
Bail Bond Hotline of Texas
103 North Moody, Suite A
Victoria, Texas 77901
(w/o enclosures)