



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Deputy D. Huffman  
Public Information Officer  
Parker County Sheriff's Office  
129 Hogle Street  
Weatherford, Texas 76086

OR2016-13351

Dear Deputy Huffman:

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# 614086.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all police, fire, or EMS calls for service for three specified addresses during specified time periods. You state you have no information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you claim section 552.117 of the Government Code for the submitted information, section 552.1175 is the proper exception to raise in this instance because the sheriff's office does not hold the submitted information in an employment capacity. Additionally, while you also claim an exception under section 552.021 of the Government Code, we note this section is not an exception to disclosure under the Act, and provides only for the availability of public information. *See Gov't Code* § 552.021.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-12088 (2016). In that ruling, we determined: (1) to the extent the sheriff's office maintained law enforcement records depicting a 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, (2) sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy, (3) the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code, (4) sheriff's office must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code, and (5) the remaining information must be released. We note the present request does not require the sheriff's office to compile unspecified law enforcement records concerning an individual, and thus, does not implicate any individual's right to privacy. Therefore, the facts and circumstances have changed with respect to any information previously withheld under section 552.101 in conjunction with common-law privacy as part of a criminal history compilation. Accordingly, the sheriff's office may not rely on Open Records Letter No. 2016-12088 with respect to that information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we have no indication the law, facts, or circumstances on which the previous ruling was based have changed with respect to the remaining submitted information. Thus, the sheriff's office must continue to rely on Open Records Letter No. 2016-12088 as a previous determination and withhold or release the remaining information at issue, which we marked, in accordance with that ruling.<sup>3</sup> *See id.*

Next, we address your arguments against disclosure of the remaining submitted information which is not subject to the prior ruling. 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. *See* 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information pertains to "incidents [that] did not or have not resulted in arrest, prosecution, conviction, or deferred adjudication." We note, however, section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case that "*did not result* in conviction or deferred adjudication." *See id.* § 552.108(a)(2) (emphasis added).

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Further, you do not explain or indicate whether the remaining information pertains to a closed criminal case. Thus, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

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. We understand the sheriff's office raises section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. You argue releasing any portion of the remaining information would place a named individual at risk for injury. However, upon review, we conclude the sheriff's office has not demonstrated release of any of the remaining information would subject anyone to a specific risk of harm. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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. Thus, the sheriff's office must

---

<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).

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

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. However, we note section 552.1175 is not applicable to an individual's girlfriend. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find the information we have marked relates to an officer subject to section 552.1175. You state, and provide documentation showing, the officer at issue has elected to restrict access to the information in accordance with section 552.1175(b). Accordingly, the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code. However, we find you have failed to demonstrate the remaining information is subject to section 552.1175 of the Government Code, and it may not be withheld on that basis.

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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

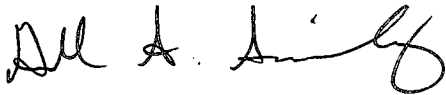
In summary, the sheriff's office must continue to rely on Open Records Letter No. 2016-12088 as a previous determination and withhold or release the portions of the submitted information we have marked in accordance with that ruling. The sheriff's office must withhold (1) the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.1175 of the Government Code; and (3) the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name being the most prominent.

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 614086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)