



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Ms. Crystal Koonce  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2016-18003

Dear Ms. Koonce:

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# 621965.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all information related to two specified incidents. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information you have marked relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information you have marked.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the

basic information, which must be released, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We have also determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). The identity of a victim of child abuse or neglect is also private. *Cf.* Fam. Code § 261.201.

Additionally, 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, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

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>2</sup> *Texas*

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<sup>1</sup>As our ruling is dispositive for this information, we need not consider your remaining arguments against its disclosure.

<sup>2</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).

*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 information in one of the remaining video recordings, as well as portions of the remaining documentation, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the audio portions of the video recording at issue are intertwined with the video portions of the recording. You state the sheriff's office lacks the technological capability to redact the confidential information in the video recording at issue. Therefore, the sheriff's office must withhold the video recording we have indicated in its entirety, as well as all public citizens' dates of birth and the additional information you have marked and we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state portions of the remaining documentation and one of the remaining video recordings contain the name and identity of an undercover narcotics officer of the sheriff's office. You state the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Upon review, we find section 552.152 is applicable to the identity of the undercover officer within the remaining documentation and the video recording at issue. We note the audio portions of the video recording at issue are intertwined with the video portions of the recording. As noted, you state the sheriff's office lacks the technological capability to redact the confidential information in the video recording at issue. Accordingly, the sheriff's office must withhold the information you have marked in the remaining information, as well as the entirety of the video recording we have indicated, under section 552.152 of the Government Code. *See* Open Records Decision No. 364 (1983).<sup>4</sup>

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or

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<sup>3</sup>As our ruling is dispositive for this information, we need not consider your remaining arguments against its disclosure.

<sup>4</sup>As our ruling is dispositive for this information, we need not consider your remaining arguments against its disclosure.

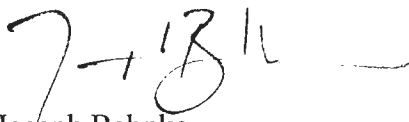
country. Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information, which must be released, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the video recording we have indicated in its entirety, as well as all public citizens' dates of birth and the additional information you have marked and 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 you have marked in the remaining information, as well as the entirety of the video recording we have indicated, under section 552.152 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130 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/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 "J. Behnke", with a horizontal line extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 621965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)