



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 22, 2016

Mr. Jonathan L. Almanza  
Assistant District Attorney  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 7853

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2016-18882

Dear Mr. Almanza:

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# 621868 (File No. 2016-0067-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named former sheriff's office employee, excluding information subject to a previous specified request for information. You state you will release some information. You claim 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the requestor seeks only the information that was not the subject of a specified previous request for information. Thus, the portion of the submitted documents that was the subject of this previous request for information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the instant request, which we have marked, and the sheriff's office is not required to release that information in response to the request.

Next, we note the responsive information contains a peace officer Texas Commission on Law Enforcement (“TCOLE”) identification number.<sup>1</sup> Section 552.002(a) of the Government Code defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). 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 an officer’s TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE’s electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the named individual’s TCOLE identification number in the responsive information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.

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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

---

<sup>1</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

Fam. Code § 261.201(a); *see id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). Upon review, we find some of the responsive information, which we have marked, consists of identifying information of the person who made a report under chapter 261. We find this information is within the scope of section 261.201(a)(1) of the Family Code. Therefore, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.<sup>2</sup> However, we find the remaining responsive information relates to an internal affairs investigation by the department. You have not established this information consists of a report of child abuse or neglect nor does the information reveal the identity of an individual who made a report of suspected child abuse or neglect for the purposes of section 261.201(a)(1) of the Family Code. Furthermore, we find you failed to establish any of the remaining responsive information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and it may not be withheld on the basis of section 261.201(a)(2). Therefore, none of the remaining responsive information is confidential under section 261.201 of the Family Code and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977).

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). The remaining responsive information consists of portions of an internal administrative investigation of a former sheriff's office employee. Although you state the information at issue relates to an ongoing criminal investigation being conducted by another law enforcement agency, you do not inform us this other law enforcement agency objects to disclosure of the information because its release would interfere with an ongoing criminal investigation. Thus, section 552.108(a)(1) is inapplicable to the information at issue. Accordingly, the sheriff's office may not withhold any of the remaining responsive information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses section 39.030 of the Education Code, which provides in relevant part:

(b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, Chapter 39 of the Education Code] are confidential and may be released only in accordance with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Educ. Code § 39.030(b). You assert some of the remaining responsive information is confidential pursuant to section 39.030(b). We note that the Education Code "applies to educational institutions supported in whole or in part by state tax funds[.]" *Id.* § 1.001. The sheriff's office is not an educational institution. Thus, the Education Code does not apply to the sheriff's office. Accordingly, the sheriff's office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 39.030 of the Education Code.

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, we note the doctrine of common-law privacy generally protects the identifying information of juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201.

Additionally, 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. *See Indus. Found.*, 540 S.W.2d at 681-82. 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>3</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.

Upon review, we find the information we have marked 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 in conjunction with common-law privacy. We note two of the dates of birth in the remaining responsive information belong to individuals who have been de-identified and whose privacy interests are thus protected. Thus, the sheriff's office must withhold the dates of birth of all public citizens who are not otherwise de-identified under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining responsive information either pertains to an individual who has been de-identified and whose privacy interest is, thus, protected, or is not highly intimate or embarrassing information that is of no legitimate public interest. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer complies with section 552.024

---

<sup>3</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).

of the Government Code or section 552.1175 of the Government Code.<sup>4</sup> Gov't Code § 552.117(a)(2). It is unclear whether the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Thus, if the individual at issue is a currently licensed peace officer as defined by article 2.12, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. If, however, the individual at issue is not a currently licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

In the event the individual at issue is no longer a licensed peace officer, then the information we have marked may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of current or former officials or employees only if the individual at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent the former employee at issue timely elected to keep such information confidential under section 552.024, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. If the former employee did not make a timely election under section 552.024, the sheriff's office may not withhold the information we marked under section 552.117(a)(1) of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The sheriff's office must withhold the information we have marked as well as the dates of birth of all public citizens who are not otherwise de-identified under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. In the event the individual at issue is no longer a licensed peace officer, to the extent the former employee at issue timely elected to keep such information confidential under section 552.024 of the Government Code, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. The remaining responsive information must be released.

---

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 621868

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

APR 10 2019

At 8:48 A.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-16-003797

HIDALGO COUNTY SHERIFF'S  
OFFICE,  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

v.

OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF  
TEXAS,  
*Defendant.*

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

**AGREED ORDER OF DISMISSAL**

This is a cause of action under the Public Information Act (PIA), Texas Government Code chapter 552. Plaintiff Hidalgo County Sheriff's Office and Defendant Ken Paxton, Attorney General of Texas, agree to dismiss this suit pursuant to PIA section 552.327 because the requestor has voluntarily withdrawn his request for information in writing. See Tex. Gov't Code § 552.327. A court may dismiss a PIA suit under section 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. *Id.* The Attorney General represents to the Court that the requestor, Dave Hendricks, has voluntarily withdrawn his request for information in writing. The Court is of the opinion that entry of an agreed dismissal order is appropriate.



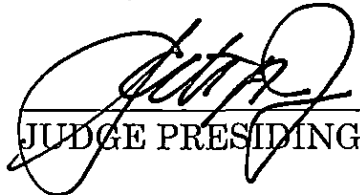
It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All costs of the court and attorney fees are taxed against the parties incurring the same;

All relief not expressly granted is denied; and

This order disposes of all claims between the parties and is final.

Signed this 10<sup>th</sup> day of April, 2019.

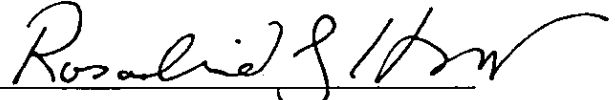
  
\_\_\_\_\_  
JUDGE PRESIDING

AGREED:



JOSEPHINE RAMIREZ-SOLIS  
State Bar No. 24007894  
Assistant District Attorney  
RICARDO RODRIGUEZ, JR.,  
CRIMINAL DISTRICT ATTORNEY  
HIDALGO COUNTY, TEXAS  
100 N. Closner, Room 303  
Hidalgo County Courthouse  
Edinburg, Texas 78539  
Telephone: (956) 292-7609  
Facsimile: (956) 292-7619  
josephine.ramirez@da.co.hidalgo.tx.us

ATTORNEYS FOR PLAINTIFF  
HIDALGO COUNTY SHERIFF'S OFFICE



ROSALIND L. HUNT  
State Bar No. 24067108  
Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4166  
Facsimile: (512) 457-4677  
Rosalind.Hunt@oag.texas.gov

ATTORNEY FOR DEFENDANT  
ATTORNEY GENERAL OF TEXAS