



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 14, 2017

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

OR2017-05300

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# 648797.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all information related to a specified case number. You indicate the sheriff's office will release some information to the requestor upon response to a cost estimate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your arguments. Further, although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024. Finally, although you claim section 552.117 of the Government Code for portions of the submitted information, section 552.1175 of the Government Code is the proper exception to raise in this instance because the sheriff's office does not hold the submitted information in an employment capacity.

notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state some of the information you have marked and indicated would identify sheriff’s office deputies who work in undercover capacities. You state release of this information would place these deputies “in grave danger and at risk of serious threat and/or bodily harm[.]” In addition, you state some of the information you have marked consists of serial numbers of firearms belonging to sheriff’s office deputies. Upon review, we find the release of the photographs you have indicated and the serial numbers you have marked would interfere with law enforcement. Therefore, the sheriff’s office may withhold the photographs you have indicated and the serial numbers you have marked under section 552.108(b)(1) of the Government Code.² However, we note section 552.108(b)(1) is not applicable to the identities of undercover officers who are also investigating officers in offense reports because that information is considered basic information pursuant to section 552.108(c). *See* Gov’t Code § 552.108(c); Open Records Decision No. 127 at 3-4 (1976). Therefore, the sheriff’s office may not withhold any of the remaining information you have marked under section 552.108(b)(1).

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

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* Gov't Code § 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked, along with all visible license plates in the submitted photographs, under section 552.130 of the Government Code.

We note some of the remaining information is subject to section 552.152 of the Government Code.³ 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.

Id. § 552.152. You seek to withhold identifying information of sheriff's office deputies who work in undercover capacities. You state release of this information would place these deputies "in grave danger and at risk of serious threat and/or bodily harm[.]" Therefore, we find section 552.152 is applicable to the identities of the undercover deputies. Accordingly, the sheriff's office must withhold the identifying information of the undercover deputies, which you have marked, under section 552.152 of the Government Code.⁴

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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976). 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'

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

privacy interest substantially outweighed the negligible public interest in disclosure.⁵ *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. We note dates of birth pertaining to individuals who have been de-identified are not protected as the de-identified individuals' privacy interests are, thus, protected. Upon review, except for the dates of birth of de-identified individuals, the sheriff's office must withhold the dates of birth you have 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(b). 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 you have failed to demonstrate the applicability of section 552.1175 to any of the remaining information. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.1175.

In summary, the sheriff's office may withhold the photographs you have indicated and the serial numbers you have marked under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the motor vehicle record information you have marked, along with all visible license plates in the submitted photographs, under section 552.130 of the Government Code. The sheriff's office must withhold the identifying information of the undercover deputies, which you have marked, under section 552.152 of the Government Code. Except for the dates of birth of de-identified individuals, the sheriff's office must withhold the dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information.⁶

⁵Section 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).

⁶We note the requestor has a right of access to his own motor vehicle record information. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, if the sheriff's office receives another request for the same information from a different requestor, we note 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).

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 648797

Enc. Submitted documents

c: Requestor
(w/o enclosures)