



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2017

Mr. Vance Hinds
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2017-10004

Dear Mr. Hinds:

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# 657022.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all information related to a specified incident. You state the sheriff's office will release some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. We understand the sheriff's office has redacted social security numbers pursuant to section 552.147(b). *Id.* § 552.147(b). However, we note the requestor has a right of access to her client's social security number. *See id.* § 552.023(b) (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). Thus, the sheriff's office may not withhold the social security number belonging to the requestor's client under section 552.147 of the Government Code.

¹Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no argument explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302.

Next, we note the submitted information contains the fingerprints of the requestor's client. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part, "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. However, section 560.002 provides, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, as the representative of the individual whose fingerprints are at issue, section 560.002(1)(A) of the Government Code gives the requestor a right of access to her client's fingerprint information, which we have marked. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions to Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the sheriff's office must release the marked fingerprints under section 560.002 of the Government Code.

Additionally, we note the remaining information includes an emergency protective order signed by a magistrate. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under "other law." Gov't Code § 552.022(a)(17). You seek to withhold a portion of the court-filed document under section 552.101 in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold information contained in the court-filed document under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed document subject to section 552.022(a)(17). Further, we will address the sheriff's office's arguments against disclosure of the remaining information.

Section 552.108(a) 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 (Tex. 1977). You state some of the submitted information relates to an ongoing investigation and release of that information would interfere with the investigation and prosecution of the case. Based upon these representation, we conclude the release of the information we marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information we marked. Therefore, you may withhold the information we marked under section 552.108(a)(1) of the Government Code.²

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. Section 552.101 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. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.).

We note the requestor has a right of access to her client’s date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, with the exception of the date of birth belonging to the requestor’s client, the 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.

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(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her client’s motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a); ORD No. 481 at 4. However, the sheriff’s office must withhold all motor vehicle record information not belonging to the requestor’s client under section 552.130 of the Government Code.

In summary, the sheriff’s office must release the marked fingerprints pursuant to section 560.002 of the Government Code. The sheriff’s office may withhold the information we marked under section 552.108(a)(1) of the Government Code. With the exception of the date of birth belonging to the requestor’s client, the sheriff’s office must withhold all public

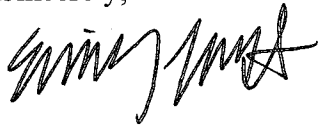
²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold all motor vehicle record information not belonging to the requestor's client under section 552.130 of the Government Code. The sheriff's office must release the remaining information.³

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 657022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some of the information being released. See Gov't Code §§ 552.023(a), 560.002(1)(A); ORD No. 481 at 4. Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.