



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2017

Mr. Thomas Gilliland  
Public Information Officer  
Harris County Sheriff's Office  
1200 Baker Street, 2<sup>nd</sup> Floor  
Houston, Texas 77002-1206

OR2017-10999

Dear Mr. Gilliland:

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# 658519 (HCSO File Number 17SO6001351).

The Harris County Sheriff's Office (the "sheriff's office") received a request for all information relating to a specified internal affairs investigation and specified information from a named detention officer's personnel file. You state the sheriff's office 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.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. However, section 552.108 is generally not applicable to records of an internal affairs investigation that are purely administrative in nature and do 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); Open Records Decision No. 350 at 3-4 (1982).

You state Exhibit B pertains to a case that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude the information we marked is subject to section 552.108(a)(2). Thus, the sheriff's office may withhold the information we marked under section 552.108(a)(2) of the Government Code. However, the remaining information at issue consists of an internal affairs investigation that is purely administrative in nature. As a result, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) 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.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the sheriff's office may withhold information we have marked 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. Section 552.101 of the Government Code encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information subject to the MPA includes both medical records and information obtained from those medical records. *See* §§ 159.002, .004; Open Records Decision No. 598 (1991). The records at issue contain medical records and information

directly obtained from medical records. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.182(a) of the Government Code provides in relevant part, "information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential." Gov't Code § 418.182(a). The fact that information may be related to a governmental body's security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The remaining information contains a surveillance video recording of the sheriff's office's jail. You state this camera is part of a security system used to protect public and/or private property from acts of terrorism or other criminal activity. You further state release of this information would reveal vulnerabilities of the system, including blind spots and camera ranges in the jail. Additionally, you argue the release of this information could compromise jail security. Upon review, we find the submitted video recording relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the sheriff's office must withhold the submitted video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

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 doctrine of common-law 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.). Thus, the

sheriff's office must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the sheriff's office may withhold the information we marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The sheriff's office must withhold the submitted video recording under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The sheriff's office must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jahanna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 658519

Enc. Submitted documents

c: Requestor  
(w/o enclosures)