



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 12, 2017

Mr. William T. Little  
Assistant County and District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2017-15485

Dear Mr. Little:

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# 666861.

The Ellis County Sheriff's Department (the "sheriff's department") received a request for all records pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b) 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: . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to a concluded criminal case that did not result in 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). The submitted information pertains to the

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<sup>1</sup>Although you do not raise section 552.108 of the Government Code in your brief, we understand you to raise this exception based on your arguments.

specified arrest. You state “it cannot be determined . . . whether [the] charges resulted in a conviction or deferred adjudication.” Upon review, we find you have failed to explain the submitted information consists of internal records or notations relating to criminal cases that concluded in results other than a conviction or deferred adjudication. As such, we conclude the sheriff’s department has failed to demonstrate the applicability of section 552.108(b)(2) of the Government Code to the submitted information and the sheriff’s department may not withhold it on that basis.

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). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). However, we note the requestor has a right of access to his client’s information. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the sheriff’s department may not withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the sheriff’s department must release the submitted 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 that reads "Ashley Crutchfield". The signature is written in a cursive style with a large, looping initial 'A'.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 666861

Enc. Submitted documents

c: Requestor  
(w/o enclosures)