



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2017

Mr. William T. Little
Assistant County and District Attorney
Ellis County and District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2017-15965

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# 666844.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for report number 17-05591. You claim some of the submitted information is 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 representative sample of information.²

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested

¹Although you do not raise section 552.147 of the Government Code in your brief, we understand the sheriff's office to assert this exception based on your markings.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 the submitted information pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the information at issue 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 you have marked.

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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, you have marked the entire narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining information at issue does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See id.* Accordingly, we determine the sheriff's office must release a sufficient portion of the narrative to encompass a detailed description of the offense. Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) 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 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 Third 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.). Upon review, we find the date of birth you have marked is subject to section 552.101 in conjunction with common-law privacy. We note the requestor may be the authorized representative of the individual whose privacy interests are at issue; thus, the requestor may have a right of access to this individual's date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is the authorized representative of one of the individual whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at

issue, then the sheriff's office may not withhold the date of birth relating to this individual under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the sheriff's office must withhold the date of birth relating to this individual under section 552.101 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. We note section 552.130 protects privacy interests. As noted above, the requestor may be the authorized representative of the individual whose privacy interests are at issue. As such, if the requestor is acting as the individual's authorized representative, he has a right of access to the individual's marked motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. In this instance, it is not clear that this requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. If the requestor is the authorized representative of the individual, the sheriff's office must release this information to the requestor. If the requestor is not the authorized representative of the individual, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. As noted above, the requestor may be the authorized representative of the individual whose privacy interests are at issue. As such, if the requestor is acting as the individual's authorized representative, he has a right of access to the individual's social security number. *See id.* § 552.023(b). In this instance, it is not clear that this requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. If the requestor is the authorized representative of the individual, the sheriff's office must release this information to the requestor. If the requestor is not the authorized representative of the individual, the sheriff's office may withhold the social security number you and we have marked under section 552.147 of the Government Code.

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code.³ Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). However, as noted above, the requestor may be the authorized representative of the individual whose e-mail address is at issue. As such, if the requestor

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

is acting as the individual's authorized representative, he has a right of access to the individual's e-mail address. *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address consents to disclosure). Thus, we must rule conditionally. If the requestor is the authorized representative of the individual, the sheriff's office must release this information to the requestor. If the requestor is not the authorized representative of the individual, the sheriff's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, with the exception of the basic information,, the sheriff's office may withhold the information it marked under section 552.108(a)(1) of the Government Code. If the requestor is the authorized representative of the individual at issue, the sheriff's office must release the remaining information to this requestor. If the requestor is not the authorized representative of the individual at issue, the sheriff's office 1) must withhold the date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; 2) must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code; 3) may withhold the social security number you and we have marked under section 552.147 of the Government Code; 4) must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure; and 5) 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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 666844

Enc. Submitted documents

c: Requestor
(w/o enclosures)