



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2017-21633

Dear Ms. Sheely:

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# 679471.

The Travis County Sheriff's Office (the "sheriff's office") received a request for records related to the requestor's house during a specified time period.¹ The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted representative sample of information.²

¹The sheriff's office states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than 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 sheriff's office states some of the submitted reports, which it marked, relate to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the marked information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth. *See id.* Thus, with the exception of the basic information, the sheriff's office may withhold the reports it marked under section 552.108(a)(2) of the Government Code.

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 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.).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. We understand the sheriff's office seeks to withhold the entirety of report numbers 12-22568 and 12-22378 under section 552.101 in conjunction with common-law privacy. However, the sheriff's office has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the

information at issue must be withheld on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the entirety of report numbers 12-22568 and 12-22378 under section 552.101 of the Government Code on that basis. Upon review, however, we find portions of report numbers 12-22568 and 12-22378 and portions of the basic information related to the remaining reports, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the submitted documentation reveals the requestor is the spouse of the individual whose privacy interests are at issue. Further, the requestor states he seeks the information at issue "on behalf of" his spouse. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the individual, then the sheriff's office may not withhold any portion of the information we marked from this requestor under section 552.101 on the basis of common-law privacy. Further, we find the sheriff's office has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, the sheriff's office may withhold the reports it marked under section 552.108(a)(2) of the Government Code. The sheriff's office must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, if the requestor is acting as the authorized representative of the individual whose privacy interest is at stake, then the sheriff's office may not withhold the information we marked under section 552.101 in conjunction with common-law privacy. The sheriff's office must release the remaining information to this requestor.³

³The information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b). Further, we note the requestor has a right of access to some of the information being released pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (l)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure). If the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bw

Ref: ID# 679471

Enc. Submitted documents

c: Requestor
(w/o enclosures)