



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2017

Ms. Diana Shearer  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2017-24144

Dear Ms. Shearer:

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# 682994 (ORR# OP-17-318).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two individuals and a specified entity during a specified time period.<sup>1</sup> The sheriff's office states it has released some of the requested information. Although the sheriff's office takes no position as to whether the submitted information is excepted under the Act, the sheriff's office states release of the submitted information may implicate the proprietary interests of Freedom Bail Bonds ("Freedom").<sup>2</sup> Accordingly, the

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<sup>1</sup>The 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).

<sup>2</sup>The sheriff's office states it did not comply with section 552.301(b) of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Freedom variously contends the sheriff's office complied with section 552.301 and failed to comply with section 552.301. Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider Freedom's arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

sheriff's office states, and provides documentation showing, it notified Freedom of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Freedom. We have reviewed the submitted arguments and the submitted information.

Initially, we note the requestor excludes dates of birth, social security numbers, motor vehicle record information, insurance policy and bank account numbers, and personal financial statements from the scope of the request. Accordingly, these types of information are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release that information in response to the request.

Next, Freedom argues the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information that is written, produced, collected, assembled, or maintained by a governmental body may be subject to disclosure under the Act if a governmental body owns, has a right of

access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

Freedom contends the requested information is not subject to the Act because the information has not been filed in the clerk's office. However, we note the information at issue was created and is maintained by the sheriff's office in furtherance of official business or a government function. Accordingly, we find this information was collected, assembled, or maintained in connection with the transaction of the sheriff's office's official business. Further, the sheriff's office has submitted this information as being subject to the Act. Therefore, we conclude the submitted information is subject to the Act and the sheriff's office must release it unless the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Next, Freedom asserts the submitted information is excepted under section 552.103 of the Government Code because Freedom states if the sheriff's office allows the requested information to be disclosed, Freedom will add the sheriff's office to a lawsuit to prevent disclosure. However, we note section 552.103 is designed to protect the interests of governmental bodies and not the interests of third parties. *See* Gov't Code § 552.103 (excepts from disclosure litigation or settlement negotiations involving the state or a political subdivision). Thus, we do not address Freedom's argument under section 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>3</sup> Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Portions of the submitted information, which we have marked, were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The sheriff's office does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

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.* Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the sheriff's office must withhold the routing number we have marked under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977).* A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109 (1975).* If a member of the public

wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, must withhold the motor vehicle record information we marked under section 552.130 of the Government Code, and must withhold the routing number we marked under section 552.136 of the Government Code. The sheriff's office must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tdw

Ref: ID# 682994

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third parties  
(w/o enclosures)