



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2018

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2018-00961

Dear Ms. Miller:

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# 691549.

The Denton County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a specified address during a defined time period. You state the sheriff's office will release some information. You also state the sheriff's office will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 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 information concerning an investigation that concluded in a result other than 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.*;

¹Section 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 under the Act. Gov't Code § 552.147(b).

see also id. § 552.301(e)(1)(A). You state Exhibit D pertains to closed criminal cases that did not result in convictions or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is applicable to this information.

However, as you acknowledge, section 552.108(a)(2) 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (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 or motor vehicle record information subject to section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold Exhibit D under section 552.108(a)(2) of the Government Code.²

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.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides in relevant part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find section 773.091 is applicable to Exhibit C. Therefore, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, which is not confidential under section 773.091, the sheriff’s office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.³

Section 552.101 of the Government Code also 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 or 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). Further, 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 marked information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff’s office must withhold the dates of birth you have marked, as well as the information we have marked for withholding within the information subject to section 773.091(g) of the Health and Safety Code, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office may not withhold this information under section 552.101 on that basis.

You inform us the sheriff’s office will redact the motor vehicle record information you have marked under section 552.130(c) of the Government Code.⁴ 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

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the motor vehicle record information you have marked for redaction and we have marked for withholding under section 552.130 of the Government Code. However, we find the information we have marked for release is not confidential under section 552.130. Consequently, the sheriff's office may not withhold this information under section 552.130.

Section 552.136 of the Government Code provides, "[n]otwithstanding 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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find you have not demonstrated the gate code you have marked consists of an access device number for purposes of section 552.136. Accordingly, the sheriff's office may not withhold the information you have marked under section 552.136.

In summary, with the exception of basic information, the sheriff's office may withhold Exhibit D under section 552.108(a)(2) of the Government Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, which must be released, the sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The sheriff's office must withhold the dates of birth you have marked, as well as the information we have marked for withholding within the information subject to section 773.091(g) of the Health and Safety Code, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff's office must withhold the motor vehicle record information you have marked for redaction and we have marked for withholding under section 552.130 of the Government Code. 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, 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, appearing to read "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 691549

Enc. Submitted documents

c: Requestor
(w/o enclosures)