



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

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

OR2019-00203

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# 747550 (Travis Co. # 643756-1 329).

The Travis County Sheriff's Office (the "sheriff's office") received a request for all incident reports for a specified time period involving the requestor's address. You state the sheriff's office will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 release of the requested

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you marked relates to an open criminal investigation by the sheriff's office. Based upon your representation and our review, we conclude release of the information 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 marked.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” 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 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). You state the information you marked pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the information at issue.

As you acknowledge, 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*. 531 S.W.2d 177; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, which you state you will release, the sheriff's office may withhold the information you marked under section 552.108(a)(1) and the information you marked under section 552.108(a)(2).²

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, 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

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

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.).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor is one of the individual's whose privacy rights are implicated and may be acting as the representative of her spouse, whose privacy rights are also implicated. As such, the requestor has a special right of access to her own information that would otherwise be withheld to protect her privacy interests, as well as the information of her spouse if she is acting as his authorized representative, and such information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a)-(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 himself). Therefore, with the exception of the information pertaining to the requestor, the sheriff's office must withhold all public citizens' dates of birth, the remaining information you marked, and the additional information we marked under section 552.101 in conjunction with common-law privacy. However, the sheriff's office may not withhold the information pertaining to the requestor's spouse under section 552.101 on that basis if the requestor is acting as his authorized representative.

We note portions of the remaining information are subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her own motor vehicle record information, as well as the motor vehicle record information of her spouse if she is acting as his authorized representative, under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. We conclude the sheriff's office must withhold the information we marked under section 552.130; however, the sheriff's office may not withhold the information pertaining to the requestor's spouse under section 552.130 if the requestor is acting as his authorized representative.

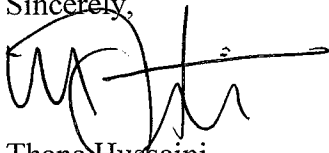
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of basic information, the sheriff's office may withhold the information you marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. With the exception of the information pertaining to the requestor, the sheriff's office must withhold all public citizens' dates of birth, the remaining information you marked, and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, the sheriff's office may not withhold the information pertaining to the requestor's spouse under section 552.101 on that basis if the requestor is acting as his authorized representative. The sheriff's office must withhold the information we marked under section 552.130 of the Government Code; however, the sheriff's office may not withhold the information pertaining to the requestor's spouse under section 552.130 if the requestor is acting as his authorized representative. The sheriff's office must release the remaining information.⁴

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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⁴We note the information being released contains information to which the requestor has a right of access beyond that of the general public. See Gov't Code §§ 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests), .137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure); ORD 481. Accordingly, if the sheriff's office receives another request for this information from an individual other than this requestor, the sheriff's office must again seek a ruling from this office.

Ref: ID# 747550

Enc. Submitted documents

c: Requestor
(w/o enclosures)