



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2019

Ms. Kristen Jasek
Assistant District Attorney
Waller County
645 12th Street
Hempstead, Texas 77445

OR2019-08305

Dear Ms. Jasek:

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# 756169.

The Waller County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for twenty-two categories of information pertaining to the requestor's arrest and interrogation. We understand the sheriff's office has released some information to the requestor or does not maintain information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us some of the requested information was the subject of two previous rulings from this office. In Open Records Letter No. 2016-18706 (2016), this office ruled the submitted video recordings must be withheld under section 552.101 of the Government

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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.

Code in conjunction with section 418.182(a) of the Government Code. In Open Records Letter No. 2019-01845 (2019), we ruled certain information may be withheld under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances upon which the prior rulings were based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the sheriff's office must continue to rely on Open Records Letter Nos. 2016-18706 and 2019-01845 as previous determinations, and withhold the previously ruled upon information in accordance with those rulings.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current requests are not encompassed by the prior rulings, we will consider the exceptions you raise.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested 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 sheriff's office “has not had time to review [the information in Exhibit G] to see whether any ongoing investigations are discussed[.]” Thus, upon review, we find the sheriff's office provided no arguments that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Accordingly, you have failed to demonstrate the applicability of section 552.108(a)(1). Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

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. 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 asserts Exhibit C and the remaining information in Exhibit D pertain to cases that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) of the Government Code is applicable to Exhibit C and the remaining information in Exhibit D. Accordingly, the sheriff's office may withhold Exhibit C and the remaining information in Exhibit D under section 552.108(a)(2) of the Government Code.

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

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. This section 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must withhold the information we marked in Exhibit F under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We have marked information in Exhibit F under section 552.117 that consists of the personal information of a peace officer who was employed by the sheriff’s office and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the sheriff’s office must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the sheriff’s office may not withhold the information we marked under section 552.117(a)(2). However, we find the remaining information is not subject to section 552.117(a)(2), and it may not be withheld on that basis.

If the information we marked in Exhibit F under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of

information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the marked information under section 552.117(a)(1). However, we find the remaining information is not subject to section 552.117(a)(1), and it may not be withheld on that basis.

Section 552.132(b) of the Government Code provides the following:

The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132(b). You argue portions of the information in Exhibit F and Exhibit G are confidential under section 552.132. Upon review, we find the information at issue is held by the sheriff's office, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Thus, the sheriff's office may not withhold any of the remaining information under section 552.132(b) of the Government Code.

In summary, the sheriff's office must continue to rely on Open Records Letter Nos. 2016-18706 and 2019-01845 as previous determinations, and withhold the previously ruled upon information in accordance with those rulings. The sheriff's office may withhold Exhibit C and the remaining information in Exhibit D under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we marked in Exhibit F under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the information we marked in Exhibit F under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a peace officer as defined by article 2.12 and if this

individual timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we marked in Exhibit F under section 552.117(a)(1) 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,



Lecelle Clarke
Attorney
Open Records Division

LC/gw

Ref: ID# 756169

Enc. Submitted documents

c: Requestor
(w/o enclosures)