



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Mr. Jorge L. Trevino, Jr.
Assistant County Attorney
Webb County
1000 Houston Street, 2nd Floor
Laredo, Texas 78040

OR2019-13418

Dear Mr. Trevino:

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# 766594 (PIA: 2019-257).

The Webb County Sheriff's Office (the "sheriff's office") received two requests for information from the same requestor pertaining to a specified incident involving a named inmate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. Additionally, the sheriff's office states release of the submitted information may implicate the interests of the Webb County District Attorney's Office (the "district attorney's office"). Accordingly, the sheriff's office states, and provides documentation showing, it notified the district attorney's office of the request for information pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the district attorney's office. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The sheriff's office seeks to withhold the information at issue under sections 552.103 and

552.108 of the Government Code. Additionally, the district attorney's office raises section 552.108 for the submitted court-filed documents. However, these exceptions are discretionary in nature and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff's office may not withhold the court-filed documents under section 552.103 or section 552.108. Additionally, because sections 552.101, 552.102, and 552.1175 of the Government Code make information confidential under the Act, we will consider these exceptions for the information subject to section 552.022.¹ We will also address the remaining arguments against disclosure of the remaining information.

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). 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). The district attorney's office informs us it objects to the release of the information at issue because the information relates to pending criminal investigations and prosecutions, and release of this information would interfere with the investigation and prosecution of these cases. Based upon this representation, we conclude the release of the information at issue 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 not subject to section 552.022(a)(17) of the Government Code, and this information may be withheld under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.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. This section encompasses information that is made confidential by statute.

¹The 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).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

The sheriff's office claims the submitted information is confidential under section 154.073 of the Civil Practice and Remedies Code and section 2009.054 of the Government Code. Section 154.073 provides in relevant part the following:

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

Civ. Prac. & Rem. Code § 154.073(a), (b). Similarly, section 2009.054 provides as follows:

(a) Sections 154.053 and 154.073, Civil Practice and Remedies Code, apply to the communications, records, conduct, and demeanor of the impartial third party and the parties.

(b) Notwithstanding Section 154.073(e), Civil Practice and Remedies Code:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

Gov't Code § 2009.054. Further, this office has found that communications during a formal settlement process were intended to be confidential. Open Records Decision No. 658 at 4 (1998); *see also* Gov't Code § 2009.054(c). Sections 154.073 and 2009.054 pertain only to communications made during an alternative dispute resolution ("ADR") procedure. Although the sheriff's office asserts portions of the remaining information consists of records

of an ADR hearing, we find the sheriff's office has not demonstrated, and the remaining information does not indicate, how the information at issue consists of a record from a formal ADR procedure. Therefore, the sheriff's office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code or section 2009.054 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the sheriff's office must withhold the date of birth we marked under section 552.102(a) of the Government Code.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code if it pertains to a currently-licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b). If the individual whose information is at issue is no longer a licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b), then the sheriff's office may not withhold this information under section 552.1175.

In summary, the sheriff's office may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The sheriff's office must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with

section 560.003 of the Government Code. The sheriff's office must withhold the date of birth we marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.1175 of the Government Code if it pertains to a currently-licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b). 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 that reads "D. Michelle Case". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 766594

Enc. Submitted documents

c: Requestor
(w/o enclosures)