



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Mr. Vance Hinds
Assistant County & District Attorney
Ellis County & District Attorney's Office
109 South Jackson Street
Waxahachie, Texas 75165

OR2019-19087

Dear Mr. Hinds:

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# 775310.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for two specified incident reports. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹Although the sheriff's office does not cite sections 552.108 or 552.147 of the Government Code in its brief to this office, we understand it to raise these exceptions based on its markings.

(2) 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;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We understand you to raise section 552.108 for some of the submitted information. A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor have you explained release of the information would interfere with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(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* Gov't Code § 552.108(a)(2), (b)(2). You have not demonstrated the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of either subsection 552.108(a)(2) or subsection 552.108(b)(2). Subsection 552.108(a)(3) is also inapplicable as the information does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the sheriff's office may not withhold the information at issue under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find no portion of the submitted information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). We note the requestor is the authorized representative of the defendant and has a right of access to otherwise private information pertaining to the defendant pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the defendant's date of birth, the sheriff's office must withhold the dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. *Gov't Code § 552.130(a)*. The requestor has a right of access to the defendant's driver's license information pursuant to section 552.023 of the Government Code. *See id. § 552.023(a)*; ORD 481 at 4. Upon review, with the exception of the defendant's driver's license information, we find the sheriff's office must withhold the motor vehicle record information you marked as well as the information we have marked under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id. § 552.147*. The requestor has a right of access to the defendant's social security number pursuant to section 552.023 of the Government Code. *See id. § 552.023(a)*; ORD 481 at 4. Upon review, with the exception of the defendant's social security number, we find the sheriff's office may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, with the exception of the defendant's date of birth, the sheriff's office must withhold the dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the defendant's driver's license information, we find the sheriff's office must withhold the motor vehicle record information you marked as well as the information we have marked under section 552.130 of the Government Code. With the exception of the defendant's social security number, the

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

sheriff's office may withhold the social security numbers you marked under section 552.147 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/be

Ref: ID# 775310

Enc. Submitted documents

c: Requestor
(w/o enclosures)