



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

Mr. Vance Hinds
Assistant County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2019-20376

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# 777309.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication.² *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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Thus, the sheriff’s office may withhold the information we marked under section 552.108(a)(2) of the Government Code.³

Section 552.101 of the Government Code exempts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has

¹As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

²Although you cite to subsection 552.108(a)(1), rather than subsection 552.108(a)(2) of the Government Code in your brief, we understand you to raise subsection 552.108(a)(2) based on the substance of your arguments

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

concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the date of birth you marked belongs to the requestor. The requestor has a right of access to her own date of birth and the sheriff's office may not withhold it from her on the basis of common-law privacy. See Gov't Code § 552.023(a) ("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 that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the sheriff's office may not withhold the information you marked under section 552.101 in conjunction with common-law privacy.

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 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 marked for release, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked and indicated under section 552.130 of the Government Code. We note some of the information we marked for release belongs to the requestor. Section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information 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. Further, we find the remaining information we marked for release does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the sheriff's office may not withhold the information we marked for release 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." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). This office has determined

insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the sheriff's office must withhold the information you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note the e-mail address you marked belongs to the requestor. The requestor has a right of access to her own e-mail address under section 552.137(b). *Id.* § 552.137(b). Consequently, the sheriff's office may not withhold the e-mail address you marked under section 552.137 of the Government Code.

We understand you to assert the remaining information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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 F, or subchapter E-1 of the Government Code. *See Gov't Code* § 411.083(a). 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 F, of the Government Code. Upon review, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

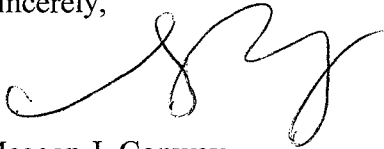
In summary, as the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The sheriff's office may withhold the information we marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with

common-law privacy. With the exception of the information we marked for release, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked and indicated under section 552.130 of the Government Code. The sheriff's office must withhold the information you marked under section 552.136 of the Government Code. 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/jxd

Ref: ID# 777309

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As noted above, we note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4; see also Gov't Code § 552.137(b). Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.