



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2019

Ms. Jennifer Slack
Assistant District Attorney
Lubbock County
904 Broadway, Second Floor
Lubbock, Texas 79401

OR2019-22981

Dear Ms. Slack:

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# 781131 (ORR 1528).

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for all reports and calls for service pertaining to a specified address involving the requestor and named individuals. You state the sheriff's office will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state offense report numbers 18-131-0303, 18-131-0226, and 17-143-0226 pertain to criminal investigations that did not result in conviction or deferred adjudication. Based upon your representation and our review, we find the sheriff's office may withhold offense report numbers 18-131-0303, 18-131-0226, and 17-143-0226 under section 552.108(a)(2) of the Government Code.

However, we note, and you acknowledge, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code or the identities of victims, witnesses, or other involved parties, but does include the identities of complainants. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold offense report numbers 18-131-0303, 18-131-0226, and 17-143-0226 under section 552.108(a)(2) of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. The sheriff's office states the emergency communication district here is subject to section 772.318. Accordingly, if the telephone numbers the sheriff's office marked consist of the originating telephone numbers of 9-1-1 callers provided by a service supplier, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Conversely, if the telephone numbers are not the originating telephone numbers of 9-1-1 callers supplied by a 9-1-1 service supplier, then the sheriff's office may not withhold this information under section 552.101 on the basis of section 772.318. However, we find the sheriff's office has failed to demonstrate any of the remaining information, which we marked for release, consists of an originating telephone number or address of a 9-1-1 caller furnished by a service supplier so as to be subject to chapter 772. Therefore, none of the remaining information is confidential under chapter 772 of the Health and Safety Code, and the sheriff's office may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. 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 submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information pertaining to the requestor, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *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 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).

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. We note 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. Upon review, we find some of the remaining information consists of motor vehicle record information. Therefore, with the exception of the motor vehicle record information belonging to the requestor, the sheriff's office must withhold the information you marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. Upon review, we find the sheriff's office may withhold the social security numbers you marked under section 552.147.

In summary, with the exception of basic information, the sheriff's office may withhold offense report numbers 18-131-0303, 18-131-0226, and 17-143-0226 under section 552.108(a)(2) of the Government Code. If the telephone numbers the sheriff's office marked consist of the originating telephone numbers of 9-1-1 callers provided by a service supplier, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of the information pertaining to the requestor, the sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the motor vehicle record

information belonging to the requestor, the sheriff's office must withhold all driver license numbers you marked under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers you marked under section 552.147. The sheriff's office must release the remaining information.

The sheriff's office requests a previous determination permitting it to withhold law enforcement records related to criminal cases that did not result in conviction or deferred adjudication pursuant to section 552.108(a)(2) of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 781131

Enc. Submitted documents

c: Requestor
(w/o enclosures)