



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 26, 2019

Ms. Daphne Session  
Houston County Attorney  
Houston County  
401 East Houston Avenue, 2<sup>nd</sup> Floor  
Crockett, Texas 75835

OR2019-27026

Dear Ms. Session:

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# 787893.

The Houston County Sheriff's Office (the "sheriff's office") received a request for seven categories of information pertaining to all pretrial diversion programs run by the Houston County Attorney, including, among other items, eligibility criteria, the number of applicants, demographic information of participants, and fees charged for the program. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address your argument the request for information requires the sheriff's office to answer questions and create new information. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Further, the Act does not require a governmental body to compile information or prepare new information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body does have a duty to make a good-faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Thus, documents in any format from which the information responsive to

the request may be derived are responsive to the request. However, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). To the extent any additional information responsive to this request existed and was maintained by the sheriff's office on the date the sheriff's office received the request, we assume you have released it. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

You assert Exhibit C is excepted from disclosure under section 552.108(a)(2) of the Government Code. 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 the information at issue relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. *See id.* You state the information at issue relates to individuals who have been placed on pretrial diversion in connection with a crime. You explain, “[u]pon successful completion of the pretrial program the cases will be closed due to being dismissed or rejected for prosecution.” Therefore, we understand the individuals at issue are subject to ongoing prosecution until they successfully complete the terms of their pretrial diversion. Accordingly, upon review, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) of the Government Code to the submitted information, and the sheriff's office may not withhold it under section 552.108(a)(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.”<sup>1</sup> Gov't Code § 552.101. This section 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 court of appeals has 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.). Thus, the sheriff's office must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

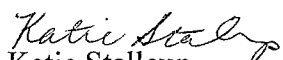
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold all public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 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 <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,

  
Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 787893

Enc. Submitted documents

c: Requestor  
(w/o enclosures)