



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2019

Mr. Robert Spangler
Counsel for Jim Wells County Sheriff's Office
Poyston Rayzor Vickery & Williams L.L.P.
802 North Carancahua Street, Suite 1300
Corpus Christi, Texas 78401

OR2019-33176

Dear Mr. Spangler:

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# 798243 (File# 46,769).

The Jim Well's County Sheriff's Office (the "sheriff's office"), which you represent, received a request for all offense reports resulting in the arrest of the requestor's client. You state the sheriff's office does not have information responsive to a portion of the request.¹ You claim some of the submitted information is not responsive to the request. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note report numbers 2006000940, 2010002446, 2015009891 are not responsive to the instant request because they do not involve the arrest of the requestor's client. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release such information

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² Although the sheriff's office raises section 552.117, we note section 552.1175 is the correct exception to raise for information the sheriff's office does not hold in its capacity as employer.

in response to this request.³ However, we find the remaining information at issue consists of offense reports and supplements involving the arrest of the requestor's client. Thus, we find the remaining information is responsive to the present request, and we will address your arguments against its disclosure.

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 . . . 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). You state report number 2018006358 relates to a pending investigation and prosecution. Based on your representation and our review, we find release of report number 2018006358 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 report number 2018006358.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *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 protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the sheriff’s office may withhold report number 2018006358 under section 552.108(a)(1) of the Government Code.⁴

Section 552.1175 of the Government Code 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. 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). You state the submitted information contains the personal telephone numbers of individuals who are peace officers. You further explain that a governmental body does not pay for this cellular service. Thus, to the extent the information you indicated relates to peace officers who elect to restrict access to their information in accordance with

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

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section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. However, if the individuals whose information is at issue do not elect to restrict access to the information in accordance with section 552.1175(b), the information you indicated may not be withheld under section 552.1175 of the Government Code.

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. *Id.* § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information you indicated under section 552.130 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 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 Third 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.). Additionally, we note the names and addresses of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Thus, the sheriff's office must withhold the dates of birth you indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human

affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the submitted information, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

In summary, with the exception of basic information, the sheriff’s office may withhold report number 2018006358 under section 552.108(a)(1) of the Government Code. To the extent the information you indicated relates to peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. The sheriff’s office must withhold the motor vehicle record information you indicated under section 552.130 of the Government Code. The sheriff’s office must withhold the dates of birth you indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must release the remaining information.⁵

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

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⁵We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a), (b) (individual has special right of access to information that relates to himself and is protected by laws intended to protect his privacy interests, and governmental body may not deny access on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the sheriff’s office receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)