



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2019-33446

Dear Ms. Lentz:

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# 799781.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information related to the Sheriff's Coin program. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.136, 552.137, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Thus, with the exception of the information we marked for release, the sheriff's office must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you

marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff's office may not withhold the remaining information you marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, the sheriff's office must withhold the information it marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.³

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 "a firefighter or volunteer firefighter or emergency medical services personnel as defined by section 773.003, Health and Safety Code." Act of May 27, 2019, 86th Leg., R.S., H.B. 2446, § 6 (to be codified at Gov't Code § 552.1175(a)(15)). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 a 5-6. Accordingly, to the extent the information we marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the sheriff's office must withhold the information under section 552.1175 of the Government Code; however, to the extent the telephone number we marked is a personal cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not subject to section 552.1175(a) or does not elect to restrict access to his information in accordance with section 552.1175(b) this information may not be withheld under section 552.1175.

¹ We note a governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision 670 (2001); Gov't Code § 552.147(b).

Section 552.136 of the Government Code provides, “Notwithstanding 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”). Upon review, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the information you marked and the sheriff’s office may not withhold it on this ground.

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). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). In *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog*, 490 S.W.2d at 250. Therefore, except for the information we marked for release, the sheriff’s office must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, we find you have failed to demonstrate the remaining information you marked is confidential under section 552.137, and the sheriff’s office may not withhold it on that basis.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. The sheriff’s office represents the release of the undercover officers’ identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officers within the information at issue. Accordingly, the sheriff’s office must withhold the identifying information of the undercover officers, which it marked, under section 552.152 of the Government Code.

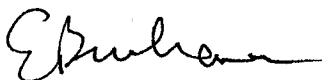
In summary, with the exception of the information we marked for released, the sheriff’s office must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the information it marked under section 552.117(a)(2) of the Government Code; however, the

sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. To the extent the information we marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the sheriff's office must withhold the information under section 552.1175 of the Government Code; however, to the extent the telephone number we marked is a personal cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. Except for the information we marked for release, the sheriff's office must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The sheriff's office must withhold the identifying information of the undercover officers, which it marked, under section 552.152 of the Government Code. The remaining information must be released.

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,



Emily Buchanan
Attorney
Open Records Division

EBO/rm

Ref: ID# 799781

Enc. Submitted documents

c: Requestor
(w/o enclosures)