



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Morgan Day Vaughan  
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OR2019-36176

Dear Ms. Vaughan:

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# 803040 (CD&M No. 54037.74918).

The Hall County Sheriff's Office (the "sheriff's office"), which you represent, received two requests from the same requestor for body worn camera recordings from a specified incident, a specified case file, and three categories of information pertaining to text messages and e-mails sent to or received by named individuals during specified time periods. You state the sheriff's office has released some information to the requestor. You state the sheriff's office does not have information responsive to the request for body worn camera recordings and one of the categories of text messages requested.<sup>1</sup> In addition, we understand the sheriff's office will redact the account number you marked pursuant to section 552.136(c) of the Government Code.<sup>2</sup> You argue some of the submitted information is not subject to the Act. In addition, you claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.132, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

The Act applies to “public information,” which is defined in section 552.002 of the Government Code as:

(a) . . . information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1). You state the text messages you marked are personal in nature and do not pertain to official business of the sheriff’s office. Based on your representations and our review, we find the information at issue does not constitute public information for purposes of the Act. *See* Gov’t Code § 552.002; *see also* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Therefore, the information you marked is not subject to the Act, and the sheriff’s office is not required to release it in response to this request.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by other

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<sup>3</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

statutes, including section 418.182 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.182 provides, in relevant part:

(a) information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may be related to a security system does not make such information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the text messages you marked relate to the security system of the Hall County Courthouse (the “courthouse”), which is used to guard against acts of terrorism or related criminal activity. You argue release of these text messages would reveal the location, video quality and clarity, camera angles, and surveillance coverage of the security cameras. Upon review, we find some of the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, we find you have failed to demonstrate any of the remaining information is subject to section 418.182(a) of the Government Code and none of it may be withheld on that basis.

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 Exhibit E and the information you marked in Exhibit D pertain to ongoing criminal investigations or prosecutions. Based on this representation, we conclude the release of the information at issue 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 the information at issue.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information in Exhibit E, which must be released, the sheriff's office may withhold Exhibit E and the information you marked in Exhibit D under section 552.108(a)(1) of the Government Code.<sup>4</sup>

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and 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 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You state the cellular telephone number we marked is the personal cellular telephone number of a deputy with the sheriff's office and the cellular telephone service is not paid for by a governmental body. Accordingly, the sheriff's office must withhold the cellular telephone number we marked under section 552.117(a)(2) of the Government Code. Upon review, however, we find the remaining information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a peace officer that is held in an employment context by the sheriff's office, and the sheriff's office may not withhold any of the remaining information it marked under section 552.117(a)(2).

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.<sup>5</sup> 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). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>5</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).

telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. The cellular telephone number we marked pertains to a peace officer not employed by the sheriff's office. Thus, the sheriff's office must withhold the cellular telephone number we marked under section 552.1175 of the Government Code if the officer elected to restrict access to this information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service is not paid for with government funds.

The remaining information contains e-mail addresses that are subject to section 552.137 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* Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or a personal e-mail address belonging to a sheriff's office employee or official used to conduct official government business. *See id.* § 552.130(c); *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). Upon review, we find the sheriff's office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>6</sup> However, the remaining e-mail addresses at issue are either of a type specifically excluded by subsection (c) or the personal e-mails of government officials located within e-mails communicating official business. Therefore, none of the remaining e-mail addresses you marked are subject to section 552.137 and none of them may be withheld 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 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. 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). We understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for some of the remaining information. However, upon review, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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<sup>6</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, the information you marked is not subject to the Act, and the sheriff's office is not required to release it in response to this request. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. With the exception of the basic information in Exhibit E, which must be released, the sheriff's office may withhold Exhibit E and the information you marked in Exhibit D under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the cellular telephone number we marked under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the cellular telephone number we marked under section 552.1175 of the Government Code if the officer elected to restrict access to this information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service is not paid for with government funds. The sheriff's office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/mo

Ref: ID# 803040

Enc. Submitted documents

c: Requestor  
(w/o enclosures)