



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 6, 2020

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-03579

Dear Ms. Bass-Domel:

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# 810651.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the background check completed during a specified deputy's pre-employment process. We understand the sheriff's office will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009), and dates of birth pursuant to a previous determination issued in Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Open Records Letter No. 2017-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). This office has also determined that a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information you marked and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information at issue relates to peace officers who are employed by other police departments. 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* Open Records Decision 506 at 5-6 (1988). Accordingly, to the extent the information at issue, which you marked, consists of the information of 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 information is a 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 an individual who is 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.

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 id.* § 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. Accordingly, the sheriff's office must withhold the information you marked under section 552.117(a)(2) of the Government Code.

Section 552.152 of the Government Code provides the following:

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.

Id. § 552.152. You seek to withhold the identity of an undercover officer. You represent the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer you marked under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the information you marked and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information you marked consists of the information of 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 it under section 552.1175 of the Government Code; however, to the extent the information is a cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the information you marked under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the identifying information of the undercover officer you marked under section 552.152 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/rm

Ref: ID# 810651

Enc. Submitted documents

c: Requestor
(w/o enclosures)