



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2020-06959

Dear Ms. Lary:

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# 815074.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to eight addresses and named individuals. You state the sheriff's office will release some of the requested information. You also state the sheriff's office does not maintain information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.152 of the Government Code.² We have considered the exceptions you claim reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

¹ 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).

² Although you raise section 552.117 of the Government Code, we note the proper exception to raise for information not held in an employment context is section 552.1175 of the Government Code.

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Call for service report number P150940462 was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information and, therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold call for service report number P150940462, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report numbers 98-5875, 02-20418, 02-24717, 10-17741, 12-9489, 12-13787, and 18-43928 relate to closed criminal investigations that did not result in convictions or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic

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

information includes, among other items, a detailed description of the offense, the names of the arresting and investigating officers, and identity of the complainant. *See* ORD 127 at 3-4. However, we note basic information does not include the identities of any witnesses or victims who are not complainants, or the address or telephone number of the complainant, unless the address is the location of the crime. *See id.* Accordingly, with the exception of basic information, which must be released, the sheriff's office may withhold incident report numbers 98-5875, 02-20418, 02-24717, 10-17741, 12-9489, 12-13787, and 18-43928 under section 552.108(a)(2) of the Government Code.⁴

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information relates to an officer subject to section 552.1175. You inform us the officer at issue has elected to restrict access to the information in accordance with section 552.1175(b). Accordingly, to the extent the information we have marked consists of personal information of the officer subject to section 552.1175, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. Conversely, to the extent the information we have marked does not consist of personal information of the officer at issue, the sheriff's office may not withhold the information we marked under section 552.1175 of the Government Code.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.⁵ *See id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

You seek to withhold the identifying information of an undercover officer under section 552.152 of the Government Code. Section 552.152 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.

Id. § 552.152. 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, which it marked, under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold call for service report number P150940462, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold incident report numbers 98-5875, 02-20418, 02-24717, 10-17741, 12-9489, 12-13787, and 18-43928 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked consists of personal information of the officer subject to section 552.1175, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. 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 withhold the identifying information of the undercover officer, which 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

⁵ 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).

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,

A handwritten signature in black ink, appearing to read 'Alex Burks', with a long horizontal flourish extending to the right.

Alexandra C. Burks
Attorney
Open Records Division

ACB/jxd

Ref: ID# 815074

Enc. Submitted documents

c: Requestor
(w/o enclosures)