



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 3, 2020

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2020-10215

Dear Mr. Entsminger:

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# 820020 (ORR# 788984-1).

The Travis County Sheriff's Office (the "sheriff's office") received a request for a specified disciplinary memorandum filed against a named former sheriff's office employee. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State."

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<sup>1</sup> Although the sheriff's office does not raise section 552.102 of the Government Code in its brief, we understand the sheriff's office to raise this exception based on its markings.

*See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The sheriff's office states some of the submitted information, if released, would interfere with law enforcement or prosecution of crime. Upon review, we agree the release of the information the sheriff's office marked would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information it marked under section 552.108(b)(1) of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff's office must withhold the employee's date of birth it marked under section 552.102(a) of the Government Code.

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. However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find the sheriff's office has not demonstrated any of the remaining information is highly intimate or

embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information 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. Some of the remaining information, which the sheriff's office marked and we marked, consists of the personal information of a peace officer who was employed by the sheriff's office and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, then the sheriff's office must withhold the marked information under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the sheriff's office may not withhold the marked information under section 552.117(a)(2).

If the information at issue pertains to an individual who is no longer a licensed peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the marked information under section 552.117(a)(1).

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. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information it marked under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the employee's date of birth it marked under section 552.102(a) of the Government Code. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the marked information under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the motor vehicle record information it marked under section 552.130 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/rm

Ref: ID# 820020

Enc. Submitted documents

c: Requestor  
(w/o enclosures)