



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Ms. Krystal Temple  
Hood County Sheriff's Office  
400 Deputy Larry Miller Drive  
Granbury, Texas 76048

OR2020-12137

Dear Ms. Temple:

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# 824908 (Ref. Nos. R20-00239 and R20-00259).

The Hood County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified incident. We understand the sheriff's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, consists of information pertaining to the analysis of an individual's blood alcohol content. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. In this instance, the first requestor is the person who provided the breath and blood specimens at the request of a peace officer. Although you claim this information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the sheriff's office must release the breath and blood analysis results we marked to the first requestor pursuant to section 724.018 of the Transportation Code.

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. Section 552.101 encompasses information made confidential by other

statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand you to assert Hood County is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You seek to withhold the telephone number and address of the 9-1-1 caller within the information at issue. Upon review, we conclude the sheriff's office must withhold the telephone number and address of the 9-1-1 caller, which we marked, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if the information at issue was furnished by a 9-1-1 service supplier.<sup>1</sup> If the information at issue does not consist of the originating telephone number and address of a 9-1-1 caller provided by a 9-1-1 service supplier, then the sheriff's office may not withhold the marked information under section 552.101 of the Government Code 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). Generally, 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 the information at issue relates to an active criminal investigation. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the sheriff's office has not shown release of the documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information

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<sup>1</sup> In that event, our ruling is dispositive and we need not address your remaining argument against disclosure of this information.

considered to be basic information). We note basic information includes, among other items, the identity of the complainant and a sufficient portion of the narrative to include a detailed description of the incident. *See* ORD 127 at 3-4. Accordingly, with the exception of the Statutory Warning, the Notice of Suspension, and the basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the sheriff's office must withhold the public citizen's date of birth we marked within the Statutory Warning and Notice of Suspension under section 552.101 of the Government Code in conjunction with common-law privacy.

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.<sup>2</sup> *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked within the Statutory Warning and Notice of Suspension under section 552.130 of the Government Code.

In summary, the sheriff's office must release the breath and blood analysis results we marked to the first requestor pursuant to section 724.018 of the Transportation Code. The sheriff's office must withhold the telephone number and address of the 9-1-1 caller we marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if the information at issue was furnished by a 9-1-1 service supplier. With the exception of the the Statutory Warning, the Notice of Suspension, and basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the Statutory Warning and Notice of Suspension, the sheriff's office must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we marked under section 552.130 of the Government Code.<sup>3</sup>

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup> We note the first requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.

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,

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/rm

Ref: ID# 824908

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)