



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2020

Mr. Joshua Humphreys  
Counsel For The Victoria County Sheriff's Office  
Allison, Bass & Magee, L.L.P.  
402 West 12th Street  
Austin, Texas 78701

OR2020-14635

Dear Mr. Humphreys:

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# 830451.

The Victoria County Sheriff's Office (The "Sheriff's Office"), Which You Represent, Received A Request For Information Related To Several Specified Arrests And Incidents Involving A Named Individual. The Sheriff's Office Claims The Submitted Information Is Excepted From Disclosure Under Sections 552.101, 552.103, And 552.108 Of The Government Code. We Have Considered The Exceptions The Sheriff's Office Claims And Reviewed The Submitted Information.

Initially, We Must Address The Sheriff's Office's Obligations Under Section 552.301 Of The Government Code, Which Prescribes The Procedures A Governmental Body Must Follow In Asking This Office To Decide Whether Requested Information Is Excepted From Public Disclosure. *See* Gov't Code § 552.301. Pursuant To Section 552.301(E), A Governmental Body Must Submit To This Office Within Fifteen Business Days Of Receiving An Open Records Request (1) Written Comments Stating The Reasons Why The Stated Exceptions Apply That Would Allow The Information To Be Withheld, (2) A Copy Of The Written Request For Information, (3) A Signed Statement Or Sufficient Evidence Showing The Date The Governmental Body Received The Written Request, And (4) A Copy Of The Specific Information Requested Or Representative Samples, Labeled To Indicate Which Exceptions Apply To Which Parts Of The Documents. *See Id.* § 552.301(E). The Sheriff's Office Received The Request For Information On March 5, 2020. The Sheriff's Office Does Not Inform Us It Was Closed For Any Business Days Between March 5, 2020, And March 26, 2020. Accordingly, The Sheriff's Office Was

Required To Provide The Information Required By Section 552.301(E) By March 26, 2020. However, The Envelope In Which The Sheriff's Office Provided The Information Required By Section 552.301(E) Was Postmarked April 3, 2020. *See Id.* § 552.308(A)(1) (Describing Rules For Calculating Submission Dates Of Documents Sent Via First Class United States Mail, Common Or Contract Carrier, Or Interagency Mail). Accordingly, We Conclude The Sheriff's Office Failed To Comply With The Procedural Requirements Mandated By Section 552.301 Of The Government Code.

Pursuant To Section 552.302 Of The Government Code, A Governmental Body's Failure To Comply With The Procedural Requirements Of Section 552.301 Results In The Legal Presumption That The Requested Information Is Public And Must Be Released Unless There Is A Compelling Reason To Withhold The Information From Disclosure. *See Id.* § 552.302; *Simmons V. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, No Pet.); *Hancock V. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, No Writ). The Sheriff's Office Claims Sections 552.101, 552.103, And 552.108 Of The Government Code For The Submitted Information. Because Section 552.101 Can Provide A Compelling Reason To Overcome The Presumption Of Openness, We Will Address The Sheriff's Office's Argument Under This Exception Against Release Of The Submitted Information. Further, Section 552.130 Of The Government Code Can Provide A Compelling Reason To Overcome The Presumption Of Openness.<sup>1</sup> Therefore, We Will Address The Applicability Of Section 552.130 To The Submitted Information. However, We Find The Sheriff's Office Has Failed To Establish A Compelling Reason To Address Its Remaining Claimed Exceptions.

Section 552.101 Of The Government Code Expects "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. Additionally, This Office Has Concluded Some Kinds Of Medical Information Are Generally Highly Intimate Or Embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court Of Appeals Has Concluded Public Citizens' Dates Of Birth Are Protected By Common-Law Privacy Pursuant To Section 552.101. *See 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.).

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<sup>1</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).

Generally, Only Highly Intimate Information That Implicates The Privacy Of An Individual Is Withheld. However, In Certain Instances, Where It Is Demonstrated The Requestor Knows The Identity Of The Individual Involved As Well As The Nature Of Certain Incidents, The Entire Report Must Be Withheld To Protect The Individual's Privacy. In This Instance, The Sheriff's Office Seeks To Withhold Some Of The Submitted Information In Its Entirety, And Portions Of The Remaining Information, Under Section 552.101 In Conjunction With Common-Law Privacy. However, The Sheriff's Office Informs Us The Requestor Seeks The Information At Issue "On Behalf Of [The Named Individual]'S Attorney." Furthermore, The Submitted Documentation Reveals The Requestor Is Acting As The Authorized Representative Of The Named Individual Whose Privacy Interest Is At Issue. *See* Gov't Code § 552.023(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). Thus, The Requestor Has A Right Of Access To Information Pertaining To The Named Individual That Would Otherwise Be Confidential Under Common-Law Privacy. Accordingly, The Sheriff's Office May Not Withhold Any Of The Submitted Information From This Requestor Under Section 552.101 On The Basis Of 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. *See* Gov't Code § 552.130. Accordingly, 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 Release The Remaining Information To This Requestor.<sup>2</sup>

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

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<sup>2</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.

Mr. Joshua Humphreys - Page 4

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/be

Ref: ID# 830451

Enc. Submitted Documents

C: Requestor  
(w/o enclosures)