



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 9, 2020

Ms. Jennifer Slack
Assistant District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408

OR2020-15716

Dear Ms. Slack:

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# 831281 (ORR.1988).

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for certain types of policies and procedures pertaining to the Lubbock County jail that were in effect during a stated period of time. You state the sheriff's office will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-09428 (2020). In that ruling, we concluded, in relevant part, the sheriff's office must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2020-09428 was based have changed with respect to the information at issue. Accordingly, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, the sheriff's office must continue to rely on Open Records Letter No.

¹ Although you also raise sections 552.111, 552.117, and 552.1175 of the Government Code, as well as section 552.101 of the Government Code in conjunction with sections 418.179 and 418.183 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

2020-09428 as a previous determination and withhold the identical information in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information at issue is not encompassed by the previous ruling, we will consider your arguments against its disclosure.

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. This section encompasses information that is made confidential by other statutes, such as sections 418.176 through 418.182 of the Government Code, which were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.177 provides that information is confidential if it:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.181 provides:

² In that instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. Section 418.182 provides, in pertinent part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may generally relate to a governmental body's security concerns does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim some of the submitted information is confidential under sections 418.176, 418.177, 418.181, and 418.182 of the Governmental Code. You state some of the information at issue pertains to "the use of, and operating procedures . . . of security systems" within the Lubbock County Detention Center (the "center"). Upon review, we find some of the information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.³ You also state some of the remaining information pertains to the center and the Lubbock County Courthouse, both of which constitute critical infrastructure for purposes of section 418.181. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). Further, you state this information reveals locations of entry and exit, as well as alternative pathways, used to transport inmates. You assert release of such information would reveal "vulnerabilities and security gaps" in the critical infrastructure and would "compromise[] officer safety and . . . the ability of the [sheriff's office] to detect and deter criminal activity." Based on your representations and our review, we conclude you have demonstrated the release of some of the information at issue would identify the technical details of particular vulnerabilities of the critical infrastructure to an act of terrorism. Accordingly, the sheriff's office must withhold the information we marked

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

under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁴ Additionally, you state some of the remaining information pertains to “the staffing/positioning requirements” regarding “inmate supervision and security within the [center].” You assert release of this information “will compromise officer safety and affect the ability of the [sheriff’s office] to detect and deter criminal activity.” Upon review, we find you have demonstrated some of the information at issue relates to the staffing requirements or tactical plan of a law enforcement agency and is maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.⁵ However, upon review, we find you have failed to demonstrate the remaining information at issue consists of information that is confidential under section 418.176, section 418.177, section 418.178, section 418.181, or section 418.182 of the Government Code. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.177, 418.181, or 418.182 of the Government Code.

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.” *Id.* § 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). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

You generally assert some of the remaining information at issue is excepted from disclosure under section 552.108(a)(1) of the Government Code. We note the information at issue consists of information contained in policies and procedural manuals of the sheriff’s office. Upon review, we find you have failed to demonstrate the information at issue pertains to a particular ongoing investigation or otherwise established release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.108(a)(1) of the Government Code.

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

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Accordingly, the sheriff’s office must withhold all fingerprints within the remaining information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the federal government or other states. *See* 28 C.F.R. § 20.21; *see also* Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code makes CHRI maintained by the Texas Department of Public Safety (“DPS”) confidential, and only allows for the dissemination of this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize the dissemination of CHRI to a criminal justice agency, but a criminal justice agency may only release CHRI to another criminal justice agency if it is for a criminal justice purpose. *Id.* § 411.089(b)(1). Certain other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency, but may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411. We further note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Accordingly, the sheriff’s office must withhold all FBI numbers within the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

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. The office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records

Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). 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.). Upon review, we find the remaining information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we are unable to determine whether the information at issue pertains to actual living individuals or fictitious individuals. Thus, we must rule conditionally. To the extent the dates of birth and the information we have marked within the remaining information pertain to real, living individuals, the sheriff's office must withhold such dates of birth and marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent a date of birth or the information we have marked within the remaining information does not pertain to a real, living individual, the sheriff's office may not withhold such dates of birth or marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.⁶ *See* Gov't Code § 552.130. However, we are unable to determine whether the information at issue pertains to actual living individuals or fictitious individuals. Therefore, we must rule conditionally. To the extent the driver's license number in the remaining information pertains to a real, living individual, the sheriff's office must withhold the driver's license number in the remaining information under section 552.130 of the Government Code. To the extent the information at issue does not pertain to a real, living individual, the sheriff's office may not withhold this information under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find portions of the remaining information may be excepted under section 552.136 of the Government Code. However, we are unable to determine whether the information at issue consists of access device numbers belonging to actual living individuals or fictitious individuals. Thus, we must rule conditionally. To the extent the information at issue consists of access device numbers belonging to a real, living individual, the sheriff's office must withhold all account, personal identification, and credit card numbers within the remaining information under section 552.136 of the Government Code. Conversely, to the extent the information

⁶ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

at issue does not consist of access device numbers or does not pertain to a real, living individual, the sheriff's office may not withhold this information under section 552.136 of the Government Code.

You state, and we agree, some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, the sheriff's office must continue to rely on Open Records Letter No. 2020-09428 as a previous determination and withhold the identical information in accordance with that ruling. The sheriff's office must withhold: (1) the information we marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; (3) the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (4) all fingerprints within the remaining information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and (5) all FBI numbers within the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. To the extent the dates of birth and the information we have marked within the remaining information pertain to real, living individuals, the sheriff's office must withhold such dates of birth and marked information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the driver's license number in the remaining information pertains to a real, living individual, the sheriff's office must withhold the driver's license number in the remaining information under section 552.130 of the Government Code. To the extent the information at issue consists of access device numbers belonging to a real, living individual, the sheriff's office must withhold all account, personal identification, and credit card numbers within the remaining information under section 552.136 of the Government Code. The sheriff's office must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.⁷

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.

⁷ We note the information being released contains a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a real, living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jlbm

Ref: ID# 831281

Enc. Submitted documents

c: Requestor
(w/o enclosures)