



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Ms. Audrea Hutson  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2020-16557

Dear Ms. Hutson:

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# 833698.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving the requestor. You state you are withholding dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). The sheriff's office states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred

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<sup>1</sup> Open Records Letter No. 2016-21706 authorizes the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

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 information includes the identities of arrestees, but does not include the identities of witnesses, motor vehicle record information subject to section 552.130 of the Government Code, or dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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. This section encompasses section 236.6 of title 8 of the Code of Federal Regulations,<sup>3</sup> which protects information regarding detainees held on behalf of United States Department of Homeland Security (“DHS”).<sup>4</sup> This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup> A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

<sup>4</sup> We note the functions of the Immigration and Naturalization Service (the “INS”) were transferred to the DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears”). You represent the basic information pertains to detainees for purposes of section 236.6. Based on these representations and our review, we find the sheriff’s office is required to abide by rules promulgated by the DHS with regard to the detainees. *See id.* § 2.1 (providing Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government’s exclusive and expressed interest in regulating aliens). You do not provide our office with any applicable federal law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the information we marked is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and the sheriff’s office must withhold it pursuant to section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (providing the Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations. *See ACLU*, 799 A.2d at 655 (concluding because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, we find you have failed to demonstrate the remaining basic information is made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the sheriff’s office may not withhold the remaining basic information under section 552.101 in conjunction with section 236.6 of title 8 of the Code of Federal Regulations.

In summary, with the exception of the basic information, the sheriff’s office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations.

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,

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/be

Ref: ID# 833698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)