



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2020

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

OR2020-17218

Dear Ms. Lentz:

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# 835174.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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).

¹ The sheriff's office states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Although you also claim section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception for information the sheriff's office holds in an employment capacity.

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).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information it marked 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 addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Upon review, we find the submitted video recording contains information subject to section 552.117 of the Government Code. You state the sheriff's office lacks the technological capability to redact the information from the video recording at issue. We note 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, to the extent the information at issue in the submitted video recording pertains to an individual that is a currently licensed peace officer as defined by article 2.12, the sheriff's office must withhold the submitted video recording in its entirety under section 552.117(a)(2) of the Government Code. However, if the individual at issue in the submitted video recording is not currently a licensed peace officer, then the sheriff's office may not withhold the submitted video recording under section 552.117(a)(2).

If the individual at issue in the submitted video recording is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that 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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individual at issue in the submitted video recording is not a peace officer as defined by article 2.12 of the Code of

Criminal Procedure and to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the submitted video recording in its entirety under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue in the submitted video recording is not a peace officer as defined by article 2.12 of the Code of Criminal Procedure and did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the submitted video recording under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue in the submitted video recording pertains to an individual that is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the submitted video recording in its entirety under section 552.117(a)(2) of the Government Code. To the extent the individual at issue in the submitted video recording is not a peace officer as defined by article 2.12 of the Code of Criminal Procedure and timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the submitted video recording in its entirety under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The sheriff's office must release the remaining information.³

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

³ We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). 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.

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# 835174

Enc. Submitted documents

c: Requestor
(w/o enclosures)