



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2020

Ms. Angela Albers
Criminal District Attorney
Wood County
P.O. Box 689
Quitman, Texas 75783

OR2020-17527

Dear Ms. Albers:

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# 836749.

The Wood County Sheriff's Office (the "sheriff's office") received a request for records pertaining to the requestor's client. You state you will release basic information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) 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 Exhibit C relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the 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 considered to be basic information). Accordingly, with the exception of basic information, the sheriff’s office may withhold Exhibit C under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) 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 NCIC network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); see generally Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. See Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). 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 Government Code chapter 411. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the information we have marked in Exhibit B consists of CHRI which the sheriff’s office must withhold 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. *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 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.). We note the requestor has a right of access to her client’s date of birth. See Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of

¹ 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).

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"); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor's client's date of birth, the sheriff's office must withhold all public citizens' dates of birth in Exhibit B 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. Gov't Code § 552.130. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to her client's motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor's client, we must rule conditionally. To the extent the motor vehicle record information we have marked in Exhibit B belongs to the requestor's client, she has a right of access under section 552.023 to this information, and the sheriff's office may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information we have marked in Exhibit B does not belong to the requestor's client, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. With the exception of the requestor's client's date of birth, the sheriff's office must withhold all public citizens' dates of birth in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information we have marked in Exhibit B does not belong to the requestor's client, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.²

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

² 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, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 836749

Enc. Submitted documents

c: Requestor
(w/o enclosures)