



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Ms. Barbara Welch
Records Clerk
Uvalde County Sheriff's Office
339 King Fisher Lane
Uvalde, Texas 78801

OR2020-17925

Dear Ms. Welch:

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# 836743.

The Uvalde County Sheriff's Office (the "sheriff's office") received a request for reports involving a named individual during a specified month. 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.

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state the sheriff's office received the request for information on April 30, 2020. Thus, the sheriff's office's ten-business-day deadline was May 14, 2020. The envelope in which the sheriff's office sent its request for a ruling is post-marked May 15, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the sheriff's office failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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 raises section 552.108 for the information at issue. However, we find you have failed to establish a compelling reason to address this exception. We note portions of the submitted information are subject to sections 552.101 and 552.130 of the Government Code.² Because these sections can provide compelling reasons to overcome the presumption of openness, we will also address your arguments under these sections for the information at issue. Accordingly, we will consider the applicability of these exceptions to the submitted information.

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. 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. The 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 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.). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must generally withhold the information we marked 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 a 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. Upon review, we find the sheriff’s office must generally withhold the information we marked under section 552.130 of the Government Code.

However, the requestor may have a right of access to some of the information is at issue. As such, the requestor, if acting as an authorized representative of an individual whose information is at issue, has a right of access to that individual’s information. *See generally* Gov’t Code § 552.023; ORD 481 at 4 (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear which individual the requestor represents. Therefore, we rule conditionally. To the extent the requestor is acting as an individual’s authorized representative, the sheriff’s office must release the information pertaining to that individual to the requestor. To the extent the requestor is not acting as an individual’s authorized representative, the sheriff’s office must withhold the information we marked

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code.

In summary, the sheriff's office must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. However, if the requestor is acting as an individual's authorized representative, the sheriff's office must release the information pertaining to that individual to the requestor. The sheriff's office must release the remaining information.

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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/rm

Ref: ID# 836743

Enc. Submitted documents

c: Requestor
(w/o enclosures)