



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-18223

Dear Ms. Lary:

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# 836573.

Fort Bend County (the "county") received a request for information pertaining to three named deputies employed by the county's sheriff's office (the "sheriff's office"), excluding driver's license numbers, social security numbers, and home addresses. You indicate you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and (b)(2) protect information relating to a concluded criminal investigation that did not result in a conviction or deferred adjudication. A governmental body that raises section 552.108 must explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See Cornyn*, 86 S.W.3d 320 (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 represent the information at issue relates to closed criminal investigations by the sheriff's office that did not result in convictions or deferred adjudications. Upon review, we find the county may generally withhold the information we marked under section 552.108(a)(2) of the Government Code.¹ However, we note the remaining information pertains to internal investigations conducted by the sheriff's office and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, the county failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the remaining information, and the county may not withhold the remaining information on those bases.

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). 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* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic

¹ As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

information, which must be released, the county may withhold the information we marked pursuant to section 552.108(a)(2) of the Government Code.²

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders and juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 58.007, 261.201. However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee’s qualifications and performance and the circumstances of public employee’s resignation or termination), 423 at 2 (1984).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the county has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the county may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the county must withhold the remaining motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the county may withhold the information we marked under section 552.108(a)(2) of the Government Code. The county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the remaining motor vehicle record information you marked under section 552.130 of the Government Code. The county must release the remaining information.

² As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/rm

Ref: ID# 836573

Enc. Submitted documents

c: Requestor
(w/o enclosures)