



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2020

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-18542

Dear Mr. Wipke:

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# 836675.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to three named individuals. The sheriff's office informs us it will release some information to the requestor. The sheriff's office states it does not have any responsive information pertaining to two of the named individuals.¹ The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.² We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² Although the sheriff's office does not cite to section 552.101 or section 552.137 of the Government Code in its brief, we understand the sheriff's office to raise these sections based on its markings. Additionally, we note the sheriff's office submits documentation showing the cases at issue are closed and did not result in conviction or deferred adjudication. However, we further note the sheriff's office informs us it released some of the information at issue, and it did not raise or make arguments in support of section 552.108 of the Government Code in its brief to this office. Accordingly, we do not address the applicability of section 552.108 to the information at issue.

Section 552.101 of the Government Code exempts 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third 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.). However, we note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy). Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor is the authorized representative of one of the individuals whose information is at issue, and has a right of access to that individual’s information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of 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”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the sheriff’s office must withhold the information we have 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 any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff’s office may not withhold any of the remaining information under section 552.101 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. *See* Gov’t Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. However, we note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the motor vehicle record information of the individual she represents under section 552.023 of the Government Code, and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. The sheriff’s office states it does not possess the technological capability to redact information from audio files. However, because the sheriff’s office had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the sheriff’s office has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the

sheriff's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. However, no portion of the remaining information constitutes motor vehicle record information subject to section 552.130. Thus, the sheriff's office may not withhold any of the remaining information on this basis.

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 address at issue is not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail address we have marked and indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The sheriff's office must withhold the personal e-mail address we have marked and indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its 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 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,

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/be

³ As previously noted, the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. 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.

Mr. Andrew Wipke - Page 4

Ref: ID# 836675

Enc. Submitted documents

c: Requestor
(w/o enclosures)