



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 25, 2020

Ms. Amy Bass-Domel  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2020-24257

Dear Ms. Bass-Domel:

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# 845779.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all use of force reports during a specified period of time. You state the sheriff's office is relying on Open Records Letter No. 2020-12774 (2020) with respect to some of the requested information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You also state the sheriff's office will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).<sup>1</sup> We understand the sheriff's office will withhold social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.130, and

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<sup>1</sup> Open Records Letter No. 2016-21607 authorized the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

<sup>2</sup> Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, section 552.301(e)(1)(D) of the Government Code states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with “a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested[.]*” Gov’t Code § 552.301(e)(1)(D) (emphasis added). We note you have submitted a voluminous amount of information rather than a representative sample. The information submitted includes over 500 pages of documents. We have identified and reviewed a representative sample of the voluminous information submitted.<sup>3</sup>

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). Some of the submitted information consists of completed investigations subject to section 552.022(a)(1) of the Government Code. The completed investigations must be released pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for some of these completed investigations, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the sheriff’s office may not withhold any portion of the information subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code. However, because sections 552.101, 552.102, 552.130, and 552.152 of the Government Code can make information confidential under the Act, we will consider the applicability of these sections, as well as section 552.108 of the Government Code, to the information subject to section 552.022 of the Government Code. We will also consider your arguments under these exceptions for the information not subject to section 552.022.

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

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<sup>3</sup> To the extent the sheriff’s office identifies confidential information subject to a provision not addressed in this ruling, the sheriff’s office should contact the Open Government Hotline.

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). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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). We note the information you marked consists of administrative investigations of sheriff’s office deputies. However, you state this information pertains to pending criminal investigations, and release of this information would hinder the investigation and prosecution of these criminal cases. Based upon this representation, we conclude the release of the information you marked 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, the sheriff’s office may withhold the information you marked under section 552.108(a)(1) of the Government Code.<sup>4</sup>

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). Similarly, section 552.108(b)(2) of the Government Code exempts from disclosure “[a]n 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 . . . if: . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). As noted above, section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Morales*, 840 S.W.2d 519; *see also* Open Records Decision No. 350 at 3-4 (1982). You state the information you marked relates to closed investigations that did not result in either conviction or deferred adjudication. However, we note the information at issue 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, you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the information at issue, and the sheriff’s office may not withhold the information at issue on that basis.

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 of the Government Code encompasses section 58.008 of the Family Code, which provides, in part, as follows:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22.* The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See Fam. Code § 51.02(2)* (defining “child” for purposes of title 3 of Family Code). We note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. You assert the information you marked is confidential under section 58.008(b) of the Family Code. Upon review, however, we find the information at issue consists of administrative records that do not constitute juvenile law enforcement records for purposes of section 58.008(b). Therefore, the sheriff’s office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*See id.* § 261.201(a). You assert the information you marked relates to reports of alleged abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). However, upon review, we find the information at issue consists of internal administrative records. Thus, we find you have not demonstrated any portion of the information at issue consists of a report of alleged or suspected child abuse or neglect, nor does the information reveal the identity of an individual who made a report of alleged or suspected child abuse or neglect for purposes of section 261.201(a)(1). Furthermore, we find you have failed to demonstrate this information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Accordingly, the sheriff’s office may not withhold the information at issue under section 552.101 in conjunction with section 261.201(a).

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff’s office must withhold all employees’ dates of birth under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by this state or another state or country. Gov’t Code § 552.130(a)(1), (2). Accordingly, the sheriff’s office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. The sheriff’s office represents the release of the undercover officers’ identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the remaining information. Accordingly, the sheriff’s office must withhold the identifying information of the undercover officers, which you marked, under section 552.152 of the Government Code.

Section 552.101 of the Government Code also 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. See Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. See ORD 394; *cf.* Fam. Code § 58.008(b).

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 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 pertains to identified individuals and is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office may withhold the information you marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold all employees' dates of birth under section 552.102(a) of the Government Code. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The sheriff's office must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/eb

Ref: ID# 845779

Enc. Submitted documents

c: Requestor  
(w/o enclosures)