



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 22, 2020

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

OR2020-26603

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# 850152.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a named former employee. You 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).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to the submitted information. We note the Act does not permit the selective disclosure of information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007;

¹ 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.

² Although the sheriff's office also claims section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception to raise in this instance because the sheriff's office holds the information at issue in an employment capacity.

Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). We note the sheriff's office may have previously released some of the submitted information in response to a previous request for information. Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold the information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, to the extent the sheriff's office voluntarily released any of the submitted information to the public, the sheriff's office may not now withhold such information under section 552.108 but must instead release it. However, as sections 552.101, 552.117, and 552.152 of the Government Code can make information confidential under the Act, we will consider the applicability of these sections to the information at issue. Further, to the extent the sheriff's office has not voluntarily released any of the submitted information to the public, we will consider your argument under section 552.108 of the Government Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *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 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 v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. 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). However, in this instance, you state the information at issue pertains to pending criminal investigations, and release of this information would hinder the investigation and prosecution of these criminal cases. Based upon this representation and our review of the information at issue, we conclude release of some of the information at issue, which we have 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, section 552.108(a)(1) is applicable to the information we have marked. However, the remaining information you seek to withhold under section 552.108(a)(1) consists of information that is purely administrative in nature, and is not information that deals with the detection, investigation, or prosecution of crime. Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(1)

to the remaining information at issue. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

However, we note 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the sheriff's office may withhold the information we have marked under section 552.108(a)(1) of the Government Code, to the extent the information at issue has not been previously released.³

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You also assert some of the remaining information is subject to section 552.108(b)(1) of the Government Code. You assert release of the information at issue "would interfere with law enforcement activities and crime prevention." Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, to the extent the information at issue has not been previously released, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not

³ In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withhold any of the remaining information at issue under section 552.108(b)(1) of the Government Code.

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. This exception encompasses information other statutes make confidential, such as the Americans with Disabilities Act (“ADA”). *See* 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA requires information about the medical conditions and medical histories of applicants or employees be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. 29 C.F.R. § 1630.14(c). An employer’s medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as a confidential medical record. *Id.*; *see also* Open Records Decision No. 641 (1996). The federal Equal Employment Opportunity Commission (the “EEOC”) has determined medical information for purposes of the ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Federal regulations define “disability” for the purposes of the ADA as “(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.” 29 C.F.R. § 1630.2(g). The regulations further provide physical or mental impairment means: (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *See id.* § 1630.2(h). Upon review, we find you have failed to demonstrate the applicability of the ADA to any of the information at issue, and the sheriff’s office may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.182 of the Government Code provides, in relevant part, the following:

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov’t Code § 418.182(a). The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See*

Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You argue the information you have marked is confidential under section 418.182(a). You inform us the information at issue consists of information generated from a security system located at a certain restricted access point. You explain the information at issue reveals the specifications and operating procedures used to protect the sheriff's office from acts of terrorism or related criminal activity. You assert release of this information would provide insight into the capacities and deficiencies of the security system and would compromise the safety and welfare of the building and its occupants. Based upon these representations and our review of the information at issue, we conclude you have demonstrated the information at issue falls within the scope of section 418.182(a). Accordingly, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the sheriff's office lacks the technological capability to redact the confidential information in the video recording at issue. Therefore, the sheriff's office must withhold the video recording you have indicated, the information you have marked, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find some of the remaining information may be subject to section 552.117 of the Government Code. As noted above, you state the sheriff's office lacks the technological capability to redact the information from the video recordings at issue. We note it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the information at issue pertains to an individual that is a currently licensed peace officer as defined by article 2.12, then, with the exception of the information we have marked for release, the sheriff's office must withhold the remaining video recordings in their entirety, the information we have marked, and the information you have marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, then the sheriff's office may not withhold the information at issue under section 552.117(a)(2). Regardless, the information we have marked for release is not subject to section 552.117(a)(2), and it may not be withheld on that basis.

If the individuals whose information is at issue are no longer licensed peace officers, the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117(a)(1) also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. ORD 506 at 5-7. Therefore, if the individuals at issue are no longer peace officers as defined by article 2.12 of the Code of Criminal Procedure and to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, then, with the exception of

the information we have marked for release, the sheriff's office must withhold the remaining video recordings in their entirety, the information we have marked, and the information you have marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individuals at issue are no longer peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the information at issue under section 552.117(a)(1). Regardless, the information we have marked for release is not subject to section 552.117(a)(1), and it may not be withheld on that basis.

You seek to withhold the identifying information of an undercover officer under section 552.152 of the Government Code. Section 552.152 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.

Gov't Code § 552.152. You represent the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold the information we have marked under section 552.108(a)(1) of the Government Code, to the extent the information at issue has not been previously released. To the extent the information at issue has not been previously released, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The sheriff's office must withhold the video recording you have indicated, the information you have marked, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue pertains to an individual that is a currently licensed peace officer as defined by article 2.12, then, with the exception of the information we have marked for release, the sheriff's office must withhold the remaining video recordings in their entirety, the information we have marked, and the information you have marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individuals at issue are no longer peace officers as defined by article 2.12 of the Code of Criminal Procedure and to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, then, with the exception of the information we have marked for release,

the sheriff's office must withhold the remaining video recordings in their entirety, the information we have marked, and the information you have marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone number if the cellular telephone service is not paid for by a governmental body. The sheriff's office must withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code. 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/be

Ref: ID# 850152

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)