



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

OR2020-26614

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# 849925.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all disciplinary files, write-ups, evaluations, dates of employments, and separation documents pertaining to a named former employee. You state the sheriff's office will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, and 552.137 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

² We note, and you acknowledge, the sheriff's office did not comply with the requirements of section 552.301 of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the information at issue. *See id.* §§ 552.007, .302, .352.

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). Further, 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, e.g.*, 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). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *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 some of the submitted information, including portions of the submitted audio recordings, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You contend the sheriff’s office does not have the technological capability to redact information from the audio recordings at issue. However, because the sheriff’s office had the ability to copy the submitted audio recordings for our review, we believe the sheriff’s office has the capability to produce copies of only the non-confidential portions of the audio recordings. Further, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests will, thus, be protected. Furthermore, as noted above, you state the sheriff’s office is redacting dates of birth pursuant to Open Records Letter No. 2016-21706. However, we note the information at issue includes an additional public citizen’s date of birth. Accordingly, with the exception of the information we marked for release, the sheriff’s office must withhold the information you marked, the information we marked, and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure a peace officer’s home

³ As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Additionally, we note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Upon review, we find some of the remaining information may be subject to section 552.117(a)(2), including information in the remaining audio recordings. You contend the sheriff's office does not have the technological capability to redact information from the audio recordings at issue. However, because the sheriff's office had the ability to copy the submitted audio recordings for our review, we believe the sheriff's office has the capability to produce copies of only the non-confidential portions of the audio recordings. Accordingly, to the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, the information we marked, and the information we indicated under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.⁴ Conversely, if the individuals at issue are not currently licensed peace officers, the sheriff's office may not withhold the marked and indicated information under section 552.117(a)(2). Nevertheless, the information we marked for release does not consist of a home address and telephone number, social security number, emergency contact information, and family member information of a peace officer and may not be withheld under section 552.117(a)(2).

If the individuals are not currently licensed peace officers, section 552.117(a)(1) of the Government Code applies to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Additionally, as noted above, section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or

⁴ In this instance, as our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

former official or 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. Upon review, we find some of the remaining information may be subject to section 552.117(a)(1), including information in the remaining audio recordings. You contend the sheriff's office does not have the technological capability to redact information from the audio recordings at issue. However, because the sheriff's office had the ability to copy the submitted audio recordings for our review, we believe the sheriff's office has the capability to produce copies of only the non-confidential portions of the audio recordings. Accordingly, if the individuals are not currently licensed peace officers and the individuals made timely elections under section 552.024, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, the information we marked, and the information we indicated under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Nevertheless, the information we marked for release does not consist of a home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee and may not be withheld under section 552.117(a)(1).⁵

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find you have failed to demonstrate any portion of the remaining information is subject to section 552.1175 of the Government Code. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.1175.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See id.* § 552.130. Accordingly, we find the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the sheriff's

⁵ Regardless of the applicability of section 552.117 of the Government Code, we note 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).

office must withhold the e-mail addresses you marked and the e-mail address we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, the information we marked, and the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, the information we marked, and the information we indicated under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. If the individuals are not currently licensed peace officers and the individuals made timely elections under section 552.024, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, the information we marked, and the information we indicated under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. 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 e-mail addresses you marked and the e-mail address we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)