



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Ms. Mary King
Bastrop County Sheriff's Office
200 Jackson Street
Bastrop, Texas 78602

OR2020-27596

Dear Ms. King:

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# 852694 (BCSO File# 2020-0043).

The Bastrop County Sheriff's Office (the "sheriff's office") received two requests from different requestors for all information related to a specified incident. You state you have released some information to the requestors. You state the sheriff's office does not maintain information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find most of the submitted video recordings contain information subject to section 552.130. You state the sheriff's office does not have the technological capability to redact the motor vehicle record information from the recordings at issue. Accordingly, with the exception of the video recording we have indicated, the sheriff's office must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code.² See Open

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 As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. In addition, as we are able to make this determination, we do not address the applicability of

Records Decision No. 364 (1983). However, no portion of the remaining video recording contains motor vehicle record information subject to section 552.130, and the sheriff's office may not withhold any of it on this basis.

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 protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find no portion of the remaining video recording contains CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold the remaining video recording under section 552.101 of the Government Code on that basis.

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. Upon review, we find no portion of the remaining video recording is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining video recording under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the video recording we have indicated, the sheriff's office must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. The sheriff's office must release the remaining video recording.

section 1701.661(a) of the Occupations Code to the video recordings at issue. *See generally* Occ. Code § 1701.661(a), (e).

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 852694

Enc. Submitted documents

c: Requestors
(w/o enclosures)