



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2020

Mr. David Fulton
Assistant Criminal District Attorney
Randall County
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2020-30700

Dear Mr. Fulton:

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# 856778.

The Randall County Sheriff's Office (the "sheriff's office") received a request for records related to a specified arrest of a named individual. The sheriff's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the sheriff's office claims 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 decision." Gov't Code § 552.101. This section encompasses section 236.6 of title 8 of the Code of Federal Regulations,¹ which protects information regarding detainees held on behalf of United States Department of Homeland Security ("DHS").² This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or

¹ A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

² We note the functions of the Immigration and Naturalization Service (the "INS") were transferred to the DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears”). The sheriff’s office informs us the submitted information pertains to a detainee who is held on behalf of DHS. We understand the sheriff’s office is required to abide by rules promulgated by the DHS with regard to detainees. *See id.* § 2.1 (providing Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government’s exclusive and expressed interest in regulating aliens). The sheriff’s office does not provide our office with any applicable federal law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the information we marked is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and the sheriff’s office must withhold it pursuant to section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (providing the Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations. *See ACLU*, 799 A.2d at 655 (concluding because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, we find the sheriff’s office has failed to demonstrate any of the remaining information is made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 in conjunction with section 236.6 of title 8 of the Code of Federal Regulations.

Section 552.101 of the Government Code also 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 the Federal Bureau of Investigation (“FBI”) number within the submitted information consists of CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the FBI number under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the sheriff’s office must withhold the public citizen’s date of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff’s office must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. The sheriff’s office must withhold the FBI number we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff’s office must withhold the public citizen’s date of birth 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

Mr. David Fulton - Page 4

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 856778

Enc. Submitted documents

c: Requestor
(w/o enclosures)