



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2020

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

OR2020-31389

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# 858117.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all internal affairs investigations pertaining to three named individuals.<sup>1</sup> You state the sheriff's office will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.152 of the Government Code. You also state the sheriff's office has notified the Hutto Police Department (the "department") of the request. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The sheriff's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup> 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 seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

Initially, we note the department argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the sheriff's office has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the sheriff's office submitted as responsive to the request for information.

You state the submitted information includes law enforcement officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the submitted body worn camera recordings were not properly requested pursuant to chapter 1701, our ruling does not reach this information, which you marked, and it need not be released.<sup>3</sup> However, pursuant to section 1701.661(b), a "failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information." *Id.* § 1701.661(b).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the biometric identifiers under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must withhold the biometric identifiers you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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<sup>3</sup> As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.008 of the Family Code, which provides, in relevant part:

(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(a) (defining “delinquent conduct” 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). Section 58.008(b) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.008(b). Upon review, we find the information at issue does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that you have failed to demonstrate the applicability of section 58.008 to the information at issue, and the sheriff’s office may not withhold any portion of the remaining information under section 552.101 on this basis.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1)-(2),(b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note some of the information at issue relates to an investigation being conducted by the department. Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from the law enforcement agency that it wishes to have the information withheld. The department states the information it indicated pertains to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Thus, section 552.108(a)(1) is applicable to the information we marked.

However, we note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). You do not inform us any of the remaining information at issue pertains to a specific ongoing criminal investigation or prosecution conducted by the sheriff's office, nor have you explained its release would interfere in some way with the detection, investigation, or prosecution of crime by the sheriff's office. Thus, we find you have failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(b)(1) to the remaining information at issue. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). As noted above, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal

investigation or prosecution of alleged misconduct. *See, e.g., Ellen*, 840 S.W.2d at 526; *see also Cornyn*, 86 S.W.3d at 329; ORD 350 at 3-4. You state some of the information at issue pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information we marked. However, upon review, we find the sheriff's office has failed to establish section 552.108(a)(2) is applicable to any portion of the remaining information. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(a)(2).

However, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the sheriff's office may withhold the information we marked under section 552.108(a)(1) of the Government Code on behalf of the department and the information we marked under section 552.108(a)(2) of the Government Code.<sup>4</sup>

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). Upon review, we agree the sheriff's office must withhold the employees' dates of birth you marked under section 552.102(a) of the Government Code.

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 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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). We also note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. We have marked information under section 552.117 that consists of the personal information of peace officers who were employed by the sheriff's office and the information is held in the employment context. In this instance, however, 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 individuals whose information is at issue are

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

currently licensed peace officers as defined by article 2.12, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone services.

If the information we marked under section 552.117 pertains to individuals who are no longer licensed peace officers, then the marked information 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. Therefore, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone services.

As noted above, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The remaining information at issue consists of law enforcement records maintained by the sheriff's office and is not held by the sheriff's office as an employer. Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the sheriff's office may not withhold any portion of the remaining information at issue on that basis.

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. 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). We note section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a government body. *See* ORD 506 at 5-6. Upon review, we find some of the remaining information, which we marked, pertains to a peace officer and is held by the sheriff's office in a non-employment capacity. Further, some of the remaining information pertains to individuals who were licensed peace officers of another law enforcement agency at the time the information at issue was created. Thus, to the extent the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the

sheriff's office must withhold the information we marked under section 552.1175 of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone services. If the individuals whose information is at issue are no longer licensed peace officers or no election is made, the sheriff's office may not withhold this information under section 552.1175 of the Government Code.<sup>5</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

You seek to withhold the identifying information of undercover officers from the remaining information. 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. You represent the release of the undercover deputies' identities would subject the deputies to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover deputies' in the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover deputies, 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we conclude the information we have marked meets 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

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<sup>5</sup> In the event the peace officer's social security number is not excepted from disclosure under section 552.1175 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 under the Act. Gov't Code § 552.147(b).

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

In summary, as the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, which you marked, and it need not be released. The sheriff's office must withhold the biometric identifiers you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of basic information, which must be released, the sheriff's office may withhold the information we marked under section 552.108(a)(1) of the Government Code on behalf of the department and the information we marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the employees' dates of birth you marked under section 552.102(a) of the Government Code. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the information we marked 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 services are not paid for by a governmental body. To the extent the individuals at issue are no longer peace officers as defined by article 2.12 and timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the marked information 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 services are not paid for by a governmental body. To the extent the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone services. The sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the identifying information of the undercover deputies, which 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/be

Ref: ID# 858117

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)