



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2022

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

OR2022-01909

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# 927420.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to booking procedures and a specified policy during a stated time period. The sheriff's office states it 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 The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

¹ Open Records Letter No. 2016-21706 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. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-01068 (2018) and 2018-20732 (2018). In those rulings, we determined the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the sheriff's office may rely on Open Records Letter Nos. 2018-01068 and 2018-20732 as previous determinations and withhold or release the information we have marked in accordance with those rulings.³ *See* ORD 673 (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(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 [required public disclosure] if:

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

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming subsections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested

³ As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

information would interfere with law enforcement. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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).

The sheriff's office claims section 552.108(a)(1) and section 552.108(b)(1) for some of the remaining information. We note the information at issue consists of Standard Operating Procedures pertaining to the sheriff's office. Upon review, we find the sheriff's office has failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the sheriff's office may not withhold any portion of the remaining information at issue under section 552.108(b)(1) of the Government Code. Further, the sheriff's office does not inform us release of the information at issue would interfere with a particular pending criminal investigation or prosecution. Therefore, the sheriff's office may not withhold any portion of the remaining information at issue under section 552.108(a)(1) of the Government Code.

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 it marked under section 552.130 of the Government Code.

We note the remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code. Section 552.137 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). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, an e-mail address that a governmental entity maintains for one of its officials or employees, or a personal e-mail address belonging to a sheriff's office employee or official used to conduct official government business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)).

Because we are unable to discern whether the e-mail addresses within the remaining information belong to sheriff's office employees or officials or fall within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail addresses at issue belong to members of the public, the sheriff's office must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See* Gov't Code § 552.137(b). However, to the extent the e-mail addresses at issue are excluded by subsection 552.137(c) or belong to a sheriff's office employee or official, the e-mail addresses may not be withheld under section 552.137 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."⁴ *Id.* § 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). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we are unable to determine whether the information at issue pertains to an actual living individual or a fictitious individual. Therefore, we must rule conditionally with respect to this information. Accordingly, to the extent the information at issue pertains to a real, living individual, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office may rely on Open Records Letter Nos. 2018-01068 and 2018-20732 as previous determinations and withhold or release the information we have marked in accordance with those rulings. The sheriff's office must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. To the extent the e-mail addresses at issue belong to members of the public, the sheriff's office must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

release. To the extent the information at issue pertains to a real, living individual, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information.⁵

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jxd

Ref: ID# 927420

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵ We note the information being released contains social security numbers. 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).