



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Mr. Scott K. Stevens
First Assistant District Attorney
Coryell County
P.O. Box 919
Gatesville, Texas 76528

OR2022-07213

Dear Mr. Stevens:

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# 932141.

The Coryell County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. You state the sheriff's office released some information to the requestor with redactions made pursuant to sections 552.130(c) and 552.136(c) of the Government Code.¹ We understand the sheriff's office will withhold

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

certain social security numbers pursuant to section 552.147(b) of the Government Code.² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code.³ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes a peace officer's 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(a) of the Occupations Code provides the following:

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 body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.⁴ 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).

Next, we must address the procedural obligations of the sheriff's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a

² Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

³ Although you do not raise section 552.101 of the Government Code in conjunction with common-law privacy in your brief, we understand you to raise this doctrine based on your markings.

⁴ As we are able to make this determination, we need not address the arguments against disclosure of this information.

governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the sheriff's office received the request on November 18, 2021. You inform us the sheriff's office was closed on November 25 and 26, 2021. We note this office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office was required to provide the information required by section 552.301(e) by December 13, 2021. However, the sheriff's office submitted the copy of the request for information as required by section 552.301(e) in an envelope bearing a postmark of February 18, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the sheriff's office has failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You raise sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. Because sections 552.101, 552.130, 552.136, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the information at issue. However, we find you have failed to establish a compelling reason to address the remaining claimed exception.

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. 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. 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.). 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. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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). We note the requestor has a right of access to her client’s personal information and date of birth, and this information may not be withheld from her under common-law privacy. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Nonetheless, the sheriff’s office must withhold the remaining dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must also withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

Section 552.130 of the Government Code exempts 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* Gov’t Code § 552.130. We note section 552.130 protects personal privacy. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the information pertaining to the requestor’s client, the sheriff’s office must withhold the driver’s license numbers and issuing state for the driver’s licenses within the submitted documents and all visible license plates and motor vehicle registration information within the remaining video recordings under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code

⁵ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

§ 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the sheriff’s office must withhold the information you marked, and the additional information we marked, under section 552.136 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 address at issue is not excluded by subsection (c). Accordingly, the sheriff’s office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the requestor’s date of birth, the sheriff’s office must withhold the submitted dates of birth and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor’s client, the sheriff’s office must withhold the driver’s license numbers and issuing state for the driver’s licenses within the submitted documents and all visible license plates and motor vehicle registration information within the remaining videorecordings under section 552.130 of the Government Code. The sheriff’s office must withhold the information you marked and we marked under section 552.136 of the Government Code. The sheriff’s office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff’s office must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.⁶

⁶ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the sheriff’s office receives another request for this same information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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/jxd

Ref: ID# 932141

Enc. Submitted documents

c: Requestor
(w/o enclosures)