



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2022

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2022-11031

Dear Ms. Lary:

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# 941252 (County Attorney ID# 0231).

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all information related to a named individual during a certain date range and personnel records for a named sheriff's office employee. You state the sheriff's office will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information related to the requested personnel records. Although you state the sheriff's office has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the sheriff's office has submitted for our review. This ruling does not authorize the sheriff's office to withhold any information that is substantially different from the types of information it submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remainder of

¹ Along you do not cite to section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings.

the request existed on the date the sheriff's office received the present request for information, we assume the sheriff's office has released it to the requestor. If the sheriff's office has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 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 section encompasses 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all records involving a named individual during a certain date range. This request requires the sheriff's office to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under 552.101 on that basis. We note the sheriff's office has submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and it may not be withheld under section 552.101 on that basis. Accordingly, we will address your arguments against disclosure of this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state a portion of the information at issue pertains to active criminal investigations or prosecutions. Based on this representation, we conclude the release of the information at issue would interfere with

the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information we indicated.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state a portion of the information at issue pertains to closed cases 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 indicated.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold the information we indicated under section 552.108(a)(1) of the Government Code and may withhold the information we indicated under section 552.108(a)(2) of the Government Code.²

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The 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.). We note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (home addresses and telephone numbers not protected under privacy).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information and the remaining information, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

common-law privacy. However, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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 motor vehicle record information we marked under section 552.130 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). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find one of the e-mail addresses at issue is not of a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its public disclosure. However, you failed to demonstrate the remaining information at issue is excepted from disclosure under section 552.137 of the Government Code, and the sheriff's office may not withhold it on that basis.

In summary, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the sheriff's office may withhold the information we indicated under section 552.108(a)(1) of the Government Code and may withhold the information we indicated under section 552.108(a)(2) of the Government Code. In releasing basic information and the remaining information, 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 withhold the motor vehicle record information you marked and the additional motor vehicle record information we marked under section 552.130 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 of the e-mail address affirmatively consents to its public disclosure. 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 941252

Enc. Submitted documents

c: Requestor
(w/o enclosures)