



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2022

Ms. Bridgette Smith-Lawson
County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2022-12516

Dear Ms. Smith-Lawson:

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# 945567 (County Attorney ID# 0295).

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports related to specified incidents involving specified addresses. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.¹ Additionally, you state you notified two named third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from one of the named third parties.² We have considered the submitted arguments and reviewed the submitted information.

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

¹ Although you also raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information the sheriff's office holds in a non-employment capacity. *See* Gov't Code §§ 552.117, .1175.

² We note, as of the date of this letter, we have not received comments from the other notified third party.

apply to information requested). You state the submitted information relates to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the complainant, a detailed description of the incident, and the location of the incident, but basic information does not include the identities of victims or witnesses who are not the complainant, the identities of suspects who were not arrested, dates of birth, motor vehicle record information subject to section 552.130 of the Government Code, and telephone numbers. *See id.* at 3-4. Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.³

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 "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure [,]" and "federal judges and state judges as defined by section 1.005, Election Code[.]" *Id.* § 552.1175(a)(1), (13); *see also* 552.003(1-b.) (defining "honorably retired" for purposes of the Act). We note, for purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). We note section 552.1175 does not apply to information related to divorce. Some of the basic information pertains to individuals who may be subject to section 552.1175. Thus, to the extent the basic information we have marked relates to an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the sheriff's office must withhold the basic information we have marked under section 552.1175 of the Government Code.⁴ If the individuals whose information is at issue are not subject to section 552.1175(a) or do not elect to restrict access to their information pursuant to section 552.1175(b), the sheriff's office may not withhold this information under section 552.1175 of the Government Code. In either event, we find you have not established section 552.1175 is applicable to the remaining basic information at issue and the sheriff's office may not withhold any of the remaining basic information on that ground.

³ As our ruling is dispositive, we need not consider the remaining arguments against disclosure of this information.

⁴ In that case, as our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the doctrines of common-law and constitutional privacy. The doctrine of common-law privacy 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). However, this office has found the public has a legitimate public interest in the details of a crime. *See* Open Records Decision No. 400 at 4 (1983); *see generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). In addition, the names, addresses, and telephone numbers of members of the public are not excepted from public disclosure under common-law privacy. *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 the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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.⁵ However, we find no portion of the remaining basic information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). The notified third party argues the basic information at issue is excepted from disclosure under constitutional privacy. Upon review, we find no portion of the remaining basic information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office may not withhold any of the remaining basic information under section 552.101 on the basis of constitutional privacy.

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

In summary, with the exception of the basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information: (1) to the extent the information we have marked relates to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code, and (2) 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.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 945567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)