



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2022

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2022-12845

Dear Ms. Miller:

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# 945646 (ORR# 6891).

The Denton County Sheriff's Office (the "sheriff's office") received a request for all records involving a named individual, including a specified arrest. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor argues the sheriff's office failed to comply with section 552.301 of the Government Code 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The sheriff's office informs us it received the request for information on November 24, 2021. The sheriff's office states it was closed or operating with a skeleton crew on November 24, 2021, through November 29, 2021; December 2, 2021, through December 7 2021; December 9, 2021, through December 13, 2021; December 15, 2021, through February 2, 2022; and February 8, 2022, through February 21, 2022. Based on the sheriff's office's representations, the sheriff's office was required to provide the information required by section 552.301(b) by March 2, 2022. The envelope in which the sheriff's office provided the information required by section 552.301(b) was postmarked February 23, 2022. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or

interagency mail). Accordingly, we conclude the sheriff's office complied with the procedural requirements mandated by section 552.301 of the Government Code. Therefore, we will address the sheriff's office's claimed exceptions to disclosure of the submitted 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). The sheriff's office states the information submitted as Exhibit B pertains to an active criminal investigation or prosecution. 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 Exhibit B.

However, we note 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). 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). We note basic information does not include dates of birth or motor vehicle record information subject to section 552.130. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the sheriff's office may withhold Exhibit B under section 552.108(a)(1) of the Government Code.

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 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 Third 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.). Upon review, we find some of the information submitted as Exhibit D, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's

office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, the sheriff's office may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we marked in Exhibit D 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 945646

Enc. Submitted documents

c: Requestor
(w/o enclosures)