



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2022

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2022-18314

Dear Mr. Wipke:

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# 955830 (County Attorney ID# 0501).

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports pertaining to a specified address. You state you will release some of the requested information. You claim 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 you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the 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. 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* Gov't Code § 552.301(b). The sheriff's office received the request for information on April 4, 2022. You state the sheriff's office was closed on April 15, 2022, for Good Friday. We note this office does not count the date the request was received or holidays for purposes calculating a governmental body's deadlines. Accordingly, you were required to provide the information required by section 552.301(b) by April 19, 2022.

¹ 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.

However, the envelope in which the sheriff's office provided the information required by section 552.301(b) was postmarked April 20, 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 failed to comply with the procedural requirements mandated by section 552.301 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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The sheriff's office claims sections 552.101, 552.108, and 552.130 of the Government Code for the submitted information. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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. 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 highly intimate or 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.).

Report number 21-44422 pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, the

sheriff's office must withhold report number 21-44422 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.² We note the requestor has a special right of access to private information concerning himself and his juvenile child pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the sheriff's office must withhold the dates of birth you highlighted that do not belong to the requestor or his minor child and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You do not state the sheriff's office is part of an emergency communication district established under chapter 772 or whether the telephone numbers at issue were furnished by a 9-1-1 service supplier. Thus, we rule conditionally. To the extent the telephone numbers you have highlighted were furnished by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.318 of the Health and Safety Code, the telephone numbers must be withheld from disclosure under section 552.101 of the Government Code. However, if the telephone numbers at issue were not furnished by a 9-1-1 service supplier to an emergency communication district subject to section 772.318, we find you have failed to demonstrate the applicability of this section to the information at issue. In that instance, the telephone numbers at issue may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety 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(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the requestor's information, the sheriff's office must withhold the motor vehicle record information you highlighted and the additional information we marked under section 552.130 of the Government Code.

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

In summary, the sheriff's office must withhold report number 21-44422 in its entirety, the dates of birth you highlighted that do not belong to the requestor or his minor child, and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the telephone numbers you have highlighted were furnished by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.318 of the Health and Safety Code, the telephone numbers must be withheld from disclosure under section 552.101 of the Government Code. With the exception of the requestor's information, the sheriff's office must withhold the motor vehicle record information you highlighted and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.³

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jm

Ref: ID# 955830

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a special right of access to some of the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.