



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2022

Ms. Jodie G. McGuire
Records Clerk
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2022-18921

Dear Ms. McGuire:

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# 954022 (Ref. No. R22-00297).

The Hood County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case involving the requestor and another named individual. You claim some of the requested information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim some of the submitted information is exempted from disclosure under sections 552.101, 552.108, 552.1315, 552.130, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state the requested information includes peace officers' 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) provides:

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 section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the sheriff's office need not release it. 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).

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 subchapter E of chapter 264 of the Family Code, which applies to children's advocacy centers. *See* Fam. Code §§ 264.401-411. Section 264.408 of the Family Code provides, in relevant part:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under [the Act], and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the [Texas Department of Family and Protective Services ("the department")], department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Id. § 264.408(a); *see also id.* § 264.001(1-a) (defining "department" for purposes of chapter 264 of the Family Code). Section 264.408 provides that certain information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Section 264.408 also explicitly provides for circumstances in which such confidential information may be disclosed. *See id.* We understand some of the information at issue was obtained from a children's advocacy center (the "CAC") established under chapter 264 of the Family Code. We also understand the CAC provided services under chapter 264 to the child at issue. As part of these services, the CAC conducted a recorded interview of the child, which was provided to the sheriff's office by the CAC. Upon review, we conclude the recording at issue, which we have indicated, is confidential pursuant to section 264.408(a) of the Family Code. Furthermore, it does not appear the provisions allowing for the disclosure of this information apply to this requestor. *See id.* § 264.408(a)(1), (2). Accordingly, the sheriff's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code.¹

¹ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Section 552.108 of the Government Code provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body must explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you marked consists of internal records and notations which reflect the mental impressions or legal reasoning of attorneys representing the state. We understand the communications are maintained for internal use in matters relating to criminal prosecutions and were not intended for public disclosure. Upon review, we conclude the sheriff's office may withhold the information you marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and

their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the federal government or other states. *See* 28 C.F.R. § 20.21; *see also* Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code makes CHRI maintained by the Texas Department of Public Safety (“DPS”) confidential, and only allows for the dissemination of this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize the dissemination of CHRI to a criminal justice agency, but a criminal justice agency may only release CHRI to another criminal justice agency if it is for a criminal justice purpose. *Id.* § 411.089(b)(1). Certain other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency, but may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411. We further note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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.). However, we note the requestor has a right of access to information pertaining to himself that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023 (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 individual requests information concerning himself).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the sheriff’s office lacks the technological capability to redact the information subject to section 552.101 in conjunction with common-law privacy from some of the remaining video recordings at issue. Accordingly, the sheriff’s office must withhold the video recordings we have indicated in their entirety, the information we have marked and indicated, and, with the exception of the requestor’s date of birth, the dates of birth within the remaining

information under section 552.101 of the Government Code in conjunction with common-law privacy.² *See* Open Records Decision No. 364 (1983). However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts 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 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his own motor vehicle record information, and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Upon review, we note some of the remaining video recordings contain visible motor vehicle record information that is subject to section 552.130. As noted above, you state the sheriff's office lacks the technological capability to redact information from some of the video recordings at issue. Accordingly, the sheriff's office must withhold the video recordings we have indicated in their entirety, all license plates and registration stickers within the photographs at issue, and, with the exception of the information we have marked for release, the information you marked and the additional information we have marked under section 552.130 of the Government Code. *See* ORD 364.

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.³ Gov't Code § 552.1175. We note "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)). Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure," and "a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps as that term is defined by section 437.001[.]" *Id.* §§ 552.1175(a)(1), (15); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). The remaining information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we have marked and indicated relates to individuals subject to section 552.1175(a) of the Government Code who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold such information under section 552.1175 of the Government Code;

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

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service.⁴

Section 552.136(b) 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 government body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the sheriff’s office must withhold the information we have 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 personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *See id.* § 552.147. However, we note the requestor has a right of access to his own social security number, and such information may not be withheld from him on the basis of section 552.147. *See generally id.* § 552.023(b). Accordingly, with the exception of the requestor’s social security number, the sheriff’s office may withhold the social security numbers withing the remaining information under section 552.147 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the sheriff’s office need not release it. The sheriff’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. The sheriff’s office may withhold the information you marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff’s office must withhold the video recordings we have indicated in their entirety, the information we have marked and indicated, and, with the exception of the requestor’s date of birth, the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the video recordings we have indicated in their entirety, all license plates and registration stickers within the photographs at issue, and, with the exception of the information we have marked for release, the information you marked and the additional information we have marked under section 552.130 of the Government Code. To the extent the information we have marked and indicated relates to individuals subject to section 552.1175(a) of the Government Code who

⁴ In that instance, as our ruling is dispositive, we need not address your argument against disclosure of this information.

elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold such information under section 552.1175 of the Government Code; however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the information we have marked under section 552.136 of the Government Code. The sheriff's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. With the exception of the requestor's social security number, the sheriff's office may withhold the social security numbers withing the remaining information under section 552.147 of the Government Code. The sheriff's office must release the remaining information to this requestor.⁵

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 954022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵ As noted above, the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, 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.