



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2022

Ms. Bridgette A. Begle
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OR2022-22303

Dear Ms. Begle:

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# 959381 (Ref. Nos. P220034, P220035, P220036, P220037, and P220038).

The Galveston County Sheriff's Office (the "sheriff's office"), which you represent, received five requests from the same requestor for certain e-mails during stated periods of time, a list of all sheriff's office deputies fired for disciplinary reasons during a stated period of time, use of force reports involving deputies during a stated period of time, and sustained complaints and grievances against deputies during a stated period of time.¹ You state the sheriff's office will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, certain information pursuant to section 552.136(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684

¹ You state, and provide documentation demonstrating, the sheriff's office sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Additionally, you state, and provide documentation demonstrating, the sheriff's office sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code with respect to one of the requests for information. *See* Gov't Code § 552.2615. You inform us the requestor modified this request in response to the cost estimate. *See id.* § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

(2009).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1315 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive portions of the present requests for information, including the requested list of sheriff's office deputies fired for disciplinary reasons during a stated period of time. Additionally, you do not inform us the sheriff's office has released this information. 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 you 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 these portions of the requests existed on the date the sheriff's office received the requests, we assume the sheriff's office has released this information 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).

Next, we note some of the submitted information, which we have marked, is not responsive to the present requests for information because it does not consist of e-mails sent or received on the dates specified in the present requests. This ruling does not address the public availability of any information that is not responsive to the requests and the sheriff's office is not required to release such information in response to the present requests.³

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 information made confidential by other statutes, such as article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

³ As we are able to make this determination, we need not address your arguments against disclosure of this information.

information for the sex offender registration database of the Texas Department of Public Safety (“DPS”): the person’s full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the sheriff’s office. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person’s social security number; driver’s license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the DPS outside of the enumerated categories of information including any information regarding an employer’s name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Accordingly, the sheriff’s office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.⁴

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate

⁴ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

why investigative procedures and techniques requested were any different from those commonly known).

You state some of the remaining responsive information, if released, would interfere with law enforcement or prosecution of crime. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code.⁵ However, we find you have failed to demonstrate release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, the sheriff's office may not withhold any portion of the remaining responsive information under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201(a) of the Family Code, which provides:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert some of the remaining responsive information is confidential under section 261.201 of the Family Code. However, upon review, we conclude you have failed to establish the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Therefore, the sheriff's office may not withhold any portion of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of

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

personal privacy.”⁶ Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff’s office must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.⁷

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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 423 at 2 (1984) (scope of public employee privacy is narrow). This office has also held common-law privacy protects the identifying information of a juvenile offender or a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 58.008(b), 261.201(a). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 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). 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.).

⁶ 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 (1987), 480 (1987), 470 (1987).

⁷ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of the information pertains to individuals who will be de-identified by our markings; thus, these individuals' privacy interests are protected and the sheriff's office may not withhold information pertaining to this individual under section 552.101 on the basis of common-law privacy. 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.⁸ 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 responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1315 of the Government Code states, in relevant part, as follows:

(a) Information is confidential and excepted from the [Act] if the information identifies an individual as:

(1) a victim of:

(A) an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense described by Paragraph (A); or

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

Gov't Code § 552.1315(a). Upon review, we find you have failed to demonstrate the applicability of section 552.1315 of the Government Code to the remaining responsive information, and the sheriff's office may not withhold any portion of it on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2); *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). We note section 552.117 encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See Open Records Decision No. 506 at 5-7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this

⁸ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

instance, however, it is unclear whether the individuals whose information is at issue are current or honorably discharged peace officers as defined by article 2.12. If the individuals at issue are current or honorably discharged peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including any personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue is not a current or honorably discharged peace officer as defined by article 2.12, the information at issue may be subject to section 552.117(a)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). As noted above, section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) 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.

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. 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[.]" *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). The remaining information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we have marked relates to a current or honorably retired peace officer who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold it under section 552.1175 of the Government Code.

In summary, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure. The sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the dates of birth we have marked under section 552.102(a) 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 common-law privacy. If the individuals at issue are current or honorably discharged peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including any personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) 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. To the extent the information we have marked relates to a current or honorably retired peace officer who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold it under section 552.1175 of the Government Code. The sheriff's office must release the remaining responsive 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 959381

Enc. Submitted documents

c: Requestor
(w/o enclosures)