



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2022

Mr. James Yakovsky
Assistant County Attorney
Angelina County
P.O. Box 1845
Lufkin, Texas 75902

OR2022-34812

Dear Mr. Yakovsky:

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# 983755.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for information pertaining to named individuals, including the requestor, and a specified address during a defined period of time. You state the sheriff's office has released some 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 exception you claim and reviewed 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). You state the information you indicated relates to open and ongoing criminal investigations. We note the information for which you raise section 552.108(a)(1) includes copies of the citations that were provided to the individuals who were cited. Thus, we find release of the citations will not interfere with the detection, investigation, or prosecution of crime and the sheriff's office may not

withhold the citations at issue under section 552.108(a)(1). However, based on your representations, we conclude, the release of the remaining information you indicated 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, with the exception of the citations at issue, we find section 552.108(a)(1) is applicable to the information you indicated.

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 apply to information requested). You state the information you indicated pertains to closed cases that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information you indicated.

However, we note 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*. *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 and citations, the sheriff's office may withhold the information you indicated under section 552.108(a)(1) of the Government Code.¹ With the exception of the basic information, the sheriff's office may withhold the information you indicated under section 552.108(a)(2) of the Government Code.²

Next, we address the dates of birth and driver's license information in the citations at issue. 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. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The Third Court of Appeals has concluded

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

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

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.).

We note the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to himself that would otherwise be withheld to protect his privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the sheriff's office may not withhold the requestor's own date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, with the exception of the requestor's date of birth, which must be released to him pursuant to section 552.023 of the Government Code, the sheriff's office must withhold public citizens' dates of birth in the citations at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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. We note section 552.130 also 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 from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the requestor's own driver's license information, which must be released to him pursuant to section 552.023 of the Government Code, the sheriff's office must withhold the driver's license information in the citations at issue under section 552.130 of the Government Code.

In summary, with the exception of the basic information and citations, which must be released, the sheriff's office may withhold the information you indicated under section 552.108(a)(1) of the Government Code. With the exception of the basic information, which must be released, the sheriff's office may withhold the information you indicated under section 552.108(a)(2) of the Government Code. In releasing the citations at issue, the sheriff's office must withhold public citizens' dates of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy and driver's license information not belonging to the requestor.³

³ As previously noted, the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) ORD 481 at 4. Thus, if the sheriff's office receives another request for the same information from a different requestor, the sheriff's office must again seek a decision from this office.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jxd

Ref: ID# 983755

Enc. Submitted documents

c: Requestor
(w/o enclosures)