



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2022

Ms. Katherine Teeters
Assistant District Attorney
Office of the District Attorney
1201 Franklin, Suite 600
Houston, Texas 77002

OR2022-35209

Dear Ms. Teeters:

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# 979935 (ORR# 2022.08-0063).

The Harris County District Attorney's Office (the "district attorney's office") received a request for the entire case file pertaining to the requestor's client. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You assert the information submitted as Appendix D is excepted from disclosure under section 552.108 of the Government Code, which provides, in relevant part, as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

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.

(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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(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). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. The district attorney's office contends the instant request encompasses its entire prosecution file for the case at issue. Thus, the district attorney's office argues release of Appendix D would reveal the mental impressions or legal reasoning of prosecutors. Based on the representations of the district attorney's office and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to Appendix D. Thus, the district attorney's office may withhold Appendix D under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.

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 of the Government Code encompasses information made confidential by other statutes, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” *Open Records Decision No. 546 (1990).*

Upon review, we find a portion of the remaining information, which we marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the district attorney's office must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.² However, we find the district attorney's office has not demonstrated any portion of the remaining information consists of medical records for purposes of the MPA, and the district attorney's office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

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

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Some of the remaining information, which we have marked, consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), the district attorney's office must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, we find the remaining information at issue does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Furthermore, the information at issue does not consist of records of the identity, evaluation, or treatment of patients by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, we find section 773.091 does not apply to any portion of the remaining information, and the district attorney's office may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 414.007 of the Government Code, which reads as follows:

A record relating to a tip received under Section 414.0015(a) maintained by the [Texas Crime Stopper C]ouncil, a crime stoppers organization, a law enforcement agency, a school district, or an open-enrollment charter school, including the identity of the person who submitted the tip, is confidential and is not subject to disclosure under [the Act].

Gov't Code § 414.007. The district attorney's office states some of the information at issue relates to a tip it received from a crime stopper organization. *See id.* § 414.001(2)(B) (defining "crime stoppers organization"); *see also id.* § 414.0015 (establishing procedures for accepting and forwarding crime stoppers tips). Based on this representation, we conclude the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 414.007 of the

Government Code.³ However, we find you have failed to demonstrate any of the remaining information relates to a tip made to a crime stoppers organization pursuant to section 414.0015 of the Government Code. *See id.* § 414.001(2)(B) (defining “crime stoppers organization” as public organization operated on local or statewide level, that pays rewards to persons who report to organization information about criminal activity, and that forwards information to appropriate law enforcement agency); *see also id.* § 414.0015 (establishing procedures for accepting and forwarding crime stoppers tips). Therefore, the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 414.007 of the Government Code

Section 552.101 of the Government Code also encompasses section 58.005 of the Family Code, which provides, in relevant part, the following:

(a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and to the storage of information from which a record could be generated, including personally identifiable information, information obtained for the purpose of diagnosis, examination, evaluation, or treatment of the child or for making a referral for treatment of the child, and other records or information, created by or in the possession of:

- (1) the Texas Juvenile Justice Department;
- (2) an entity having custody of the child under a contract with the Texas Juvenile Justice Department; or
- (3) another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department.

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(5) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;

(7) a prosecuting attorney;

(8) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;

(9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; or

(10) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court

Fam. Code § 58.005(a), (a-1). Under section 58.005 of the Family Code, a "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). You inform us some of the information pertains to children who are residents in the custody of Harris County. You also state you have no indication the requestor has a right of access to the information at issue under section 58.005(a-1). Further, we have no indication the requestor is entitled to receive the information at issue under section 58.005(a-1). Accordingly, we conclude the information we marked is confidential under section 58.005 of the Family Code, and the district attorney's office must withhold it under section 552.101 of the Government Code on that basis. However, we note some of the information at issue does not reflect the age of the individual involved. Because we are unable to determine the age of the individual involved with respect to these documents, we must rule conditionally. To the extent the remaining information we marked pertains to a child who was ten years of age or older and under seventeen years of age, it is confidential pursuant to section 58.005(a) of the Family Code and must be withheld under section 552.101 of the Government Code. However, to the extent the information at issue pertains to an individual who was not ten years of age or older and under seventeen years of age, the district attorney's office may not withhold such information under section 58.005. Moreover, we note the remaining information at issue does not pertain to a child who was ten years of age or older and under seventeen years of age at the time of the reported conduct. Thus, the district attorney's office may not withhold the remaining information at issue under section 58.005.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 62.0132 of the Government Code. This provision authorizes the Office of Court Administration of the Texas Judicial System to create a standardized juror questionnaire form to be used in courts throughout the state. *See* Gov't Code § 62.0132(a). Section 62.0132(f) states information contained in a completed questionnaire is confidential and not subject to the Act. Accordingly, the district attorney's office must withhold the completed juror questionnaire in the remaining information under section 552.101 in conjunction with section 62.0132(f) of the Government Code.⁴

Section 552.101 of the Government Code also encompasses section 411.153 of the Government Code, which provides as follows:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under [the Act].
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Id. § 411.153. A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6)-(7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." *See* Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by article 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director [DPS]. Gov't Code § 411.141(5); *see id.* § 411.001(3).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.142(h) (requiring director establish standards for DNA analysis), .144(a). Section 411.144 of the Government Code provides a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b). Upon review, we find the information we marked consists of records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. We further note this information is the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Accordingly, the district attorney's office must withhold the information we marked under section 552.101

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

of the Government Code in conjunction with section 411.153(a) of the Government Code.⁵ *See City of Fort Worth v. Abbott*, 258 S.W.3d 320, 328 (Tex. App.—Austin 2008, no pet.) (section 411.153 prohibits release of DNA records held by city forensic science laboratory regardless of whether records have been forwarded to DPS state DNA database).

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov’t Code* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities 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 in conjunction with chapter 411, subchapter F, of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find a portion of the remaining information, which we marked, consists of CHRI that is confidential under section 411.083. Thus, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.⁶ However, we find the district attorney’s office has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the district attorney’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under [the Act], except that

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

⁶ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). Upon review, we find the submitted photographs consist of photographs of bodies taken during autopsies. The district attorney's office does not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Thus, the submitted autopsy photographs are confidential pursuant to section 11 of article 49.25. Accordingly, we find the district attorney's office must withhold the autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Because "the right of privacy is purely personal[.]" that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 6521)); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). In addition, we note the requestor has a right of access to her client's date of birth pursuant to section 552.023 of the Government Code and that information may not be withheld from the requestor under section 552.101 on the basis of common-law privacy. *See Gov't Code § 552.023(a)* ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy

interests”); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). 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 remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the date of birth belonging to the requestor’s client, the district attorney’s office must withhold all living public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the district attorney’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 district attorney’s office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond with inmates possess a “first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;” and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates, and our office found that “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” ORD 185. Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 428 and 430. Further, we

recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See also* ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id. see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). In this instance, the requestor is the individual whose privacy interest is at issue. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023. Thus, pursuant to section 552.023, the requestor has a special right of access to information concerning himself, and this information may not be withheld under section 552.101. *See id.* Although the requestor's client's special right of access generally encompasses private information relating to herself, visitors also have privacy rights with respect to their visits with an inmate. Thus, because the constitutional rights of these visitors are implicated, the requestor's client's special right of access does not extend to information pertaining to her visitors. *See* ORD 430. Upon review, we find some of the remaining information, which we marked falls within the zones of privacy and implicates an individual's privacy for purposes of constitutional privacy. Therefore, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy. However, we find the district attorney's office has not demonstrated any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district attorney's office may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

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

The district attorney's office asserts release of the firearm serial numbers in the remaining information would interfere with law enforcement because they could be used on illegal firearms. Further, you state release of the information at issue "would permit a private citizen to anticipate a police response and potentially expose officers and members of the public to harm." Upon review, we agree release of the information at issue would interfere with law enforcement. Accordingly, the district attorney's office may withhold the firearm serial numbers within the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.1325 of the Government Code provides the following:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56B.003, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Subchapter D, Chapter 56A, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. The definition of a victim under article 56B.003 of the Code of Criminal Procedure includes an individual who suffers personal injury or death as a result of criminally injurious conduct. Crim. Proc. Code art. 56B.003(14). The remaining information includes a victim impact statement as defined by Subchapter D, Chapter 56A of the Code of Criminal Procedure. *See, e.g., id.* art. 56A.151. The information at issue reflects the victim suffered personal injury as a result of the criminally injurious conduct. Thus, we find the individual who completed the impact statement is a victim for purposes of article 56B.003, and thus is a crime victim for purposes of section 552.1325. We have marked information that consists of the name, address, and telephone number, and other identifying information of a crime victim. Accordingly, the district attorney's office must withhold the information we have marked under section 552.1325 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.1325 to any of the remaining information at issue. Thus, the district attorney's office may not withhold any of the remaining information on the basis of section 552.1325 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). The requestor has a right of access to her client's own social security number. *See generally id.* § 552.023(a). Accordingly, the district attorney's office may withhold the social security numbers not belonging to the requestor's client under section 552.147 of the Government Code.

In summary, the district attorney's office may withhold Appendix D under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*. The district attorney's office must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 414.007 of the Government Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code. To the extent the remaining information we marked pertains to a child who is ten years of age or older and under seventeen years of age, the district attorney's office must withhold it under section 552.101 of the Government Code in conjunction with section 58.005(a) of the Family Code. The district attorney's office must withhold the completed juror questionnaire in the remaining information under section 552.101 in conjunction with section 62.0132(f) of the Government Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.153(a) of the Government Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. With the exception of the date of birth belonging to the requestor's client, the district attorney's office must withhold all living public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy. The district attorney's office may withhold the firearm serial numbers in the remaining information under section 552.108(b)(1) of the Government Code. The district attorney's office must withhold the information we have marked under section 552.1325 of the Government Code. The district attorney's office may withhold the social security numbers not belonging to the requestor's client under section 552.147 of the Government Code. The district attorney's office must release the remaining information.⁷

⁷ We note 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 district attorney's office receives another request for the same information from a different requestor, the district attorney'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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/pt

Ref: ID# 979935

Enc. Submitted documents

c: Requestor
(w/o enclosures)