



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County Criminal District Attorney
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196-0201

OR2012-16743

Dear Ms. Fourt:

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# 468423.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for information regarding a specified car accident including video recordings, photographs, GPS data, drug and alcohol test results, investigative notes of investigating officers, measurements and reconstruction, and witness statements. You inform this office you do not have information responsive to the request for data from the Event Data Recorder in the sheriff's office's vehicle involved in the accident.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted dash-cam videos were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-10957 (2012). In Open Records Letter No. 2012-10957, we determined the sheriff's office must withhold certain information in the videos at issue under section 552.101 of the Government Code in conjunction with common-law privacy. You now seek to withhold the information

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

at issue under section 552.103 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.103, section 552.103 does not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Further, we have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the sheriff's office must rely on Open Records Letter No. 2012-10957 as a previous determination and withhold or release the submitted dash-cam videos in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the remaining submitted information consists of a completed investigation subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). We note you do not raise section 552.108. Thus, the sheriff's office may withhold the remaining submitted information only to the extent it is made confidential under the Act or other law. Although you raise section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 473 (1987) (section 552.103 may be waived). Accordingly, the sheriff's office may not withhold any of the remaining submitted information under that section. However, because sections 552.101, 552.1175, and 552.130 of the Government Code make

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

information confidential for purposes of 552.022(a)(1), we will address the applicability of these sections to the remaining submitted information.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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, 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. *See* Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). Upon review, we find some of the submitted information pertains to a peace officer employed by the sheriff’s office and held in an investigative capacity. Therefore, if the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff’s office must withhold the information we have marked under section 552.1175 of the Government Code.

Finally, section 552.130(a)(2) of the Government Code provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release. *Id.* § 552.130(a)(2). The sheriff’s office must withhold the motor vehicle record information we have marked in the submitted documents and indicated in the submitted photographs under section 552.130(a)(2) of the Government Code.

³The 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).

In summary, the sheriff's office must rely on Open Records Letter No. 2012-10957 as a previous determination and withhold or release the submitted dash-cam videos in accordance with that ruling. 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 and the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. If the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code. The remaining information must be released.⁴

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 468423

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information to be released contains information to which the requestor has a right of access. See Gov't Code § 552.023. Because such information may be 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.