



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2014

Mr. Mark C. Henkes  
Hamilton County Attorney  
Hamilton County  
P.O. Box 706  
Hamilton, Texas 76531

OR2014-04816

Dear Mr. Henkes:

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# 517487.

The Hamilton County Sheriff's Office (the "sheriff's office") received a request from two requestors for all offense, incident, or other reports pertaining to ten types of offenses that occurred during a specified time period. You state the sheriff's office has released some of the requested information to the requestor. You state the sheriff's office does not possess information responsive to some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the sheriff's office redacted driver's license numbers and social security numbers, which we understand were redacted pursuant to sections 552.130(c) and 552.147(b)

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the Government Code, respectively.<sup>2</sup> However, you also state the sheriff's office redacted dates of birth. We note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (previous determinations). You do not assert, nor does our review of the records indicate, the sheriff's office has been authorized to withhold a date of birth without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we note some of the submitted reports were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-07206 (2013). In that ruling, we determined the sheriff's office: (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) may withhold certain information under section 552.108(a)(1) of the Government Code, with the exception of basic information; (3) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) must release the remaining responsive information. We note the sheriff's office no longer asserts section 552.108 for one of the reports we previously ruled may be withheld under section 552.108. Therefore, as to the report for case number SO120731, the circumstances on which Open Records Letter No. 2013-07206 was based have changed, and the sheriff's office may not rely on that ruling as a previous determination for that report. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As to the remaining information at issue in Open Records Letter No. 2013-07206, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the information we have marked, the sheriff's office must continue to rely on Open Records Letter No. 2013-07206 as a previous determination and withhold or release that information in accordance with that ruling.

---

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. 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 552.147(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 an attorney general decision under the Act. *See id.* § 552.147(b).

*See id.* However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address the public availability of this information, as well as your argument under section 552.101 of the Government Code for the report for case number SO120731.

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, 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). Some of the remaining information in Exhibit B pertains to investigations of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 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). As you do not indicate the sheriff’s office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the information we have marked must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a).<sup>3</sup>

Section 552.108 of the Government Code provides in 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:

---

<sup>3</sup>As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). As a general rule, the protections afforded by subsections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Subsection 552.108(a)(1) is applicable to information pertaining to a pending criminal investigation or prosecution, while subsection 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body claiming subsection 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the remaining reports in Exhibit A relate to pending criminal investigations by the sheriff's office or pending criminal prosecutions by the 220th Judicial District Attorney's Office (the "district attorney's office"). You indicate the district attorney's office objects to release of this information. Accordingly, we understand you to raise section 552.108(a)(1) for the information at issue. Based on your representations and our review, we conclude release of the information at issue 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, section 552.108(a)(1) is applicable to the information at issue.

We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 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 the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the sheriff's office may withhold the remaining information in Exhibit A under section 552.108(a)(1).

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 common-law right to privacy also protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You argue the remaining information in Exhibit B should be withheld in its entirety on the basis of common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which any portion of the information at issue must be withheld in its entirety on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the information at issue in its entirety under section 552.101 on that basis. However, upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff's office must withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>4</sup> Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must continue to rely on Open Records Letter No. 2013-07206 as a previous determination and withhold or release the information we have marked 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 section 261.201(a) of the Family Code and the information we have marked under

---

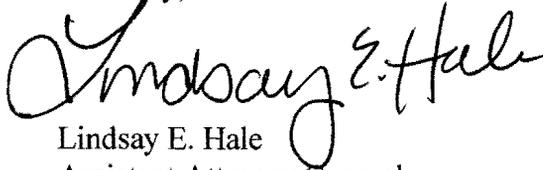
<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information in Exhibit A under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>5</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 517487

Enc. Submitted documents

c: Two Requestors  
(w/o enclosures)

---

<sup>5</sup>We note the information to be released contains social security numbers. As previously noted, section 552.147 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 Gov't Code § 552.147(b).