



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2014

Ms. Renae Mayfield  
Custodian of Records  
Kaufman County Sheriff's Office  
1900 East U.S. Highway 175  
Kaufman, Texas 75142

OR2014-19450

Dear Ms. Mayfield:

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# 540996.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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.

Upon review, we find the submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a special right of access to her client's information that would ordinarily be withheld to protect her client's privacy interests. *See* Gov't Code § 552.023(a)-(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 client's information under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find you have failed to demonstrate the remaining information that does not pertain to the requestor's client is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold the submitted information under section 552.101 on that basis.

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 the requirements of Section 552.021 if:

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

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You argue the submitted information should be withheld because "the disclosure of the evidence requested would interfere with investigation and prosecution of any offense related to this incident." However, you also claim the information relates to an investigation that "did not result in conviction or deferred adjudication." Based on these conflicting representations, we are unable to determine if the submitted information relates to an ongoing criminal case or a closed case that did not result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of

section 552.108(a)(1) or 552.108(b)(1) to the submitted information. Accordingly, the sheriff's office may not withhold the submitted information on either of these bases.

Section 552.119 of the Government Code provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the information does not demonstrate on its face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review of your arguments, we find you have failed to demonstrate release of the video recordings at issue would endanger the life or physical safety of a peace officer. Accordingly, we conclude the sheriff's office may not withhold the information at issue under section 552.119.

We note portions of the submitted information are subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 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. *Id.* § 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). The audio portion of one of the submitted video recordings contains information that pertains to a peace officer and that is not held by the sheriff's office in an employment capacity. The audio portion of the recording is intertwined with the video portion of the recording. You state the sheriff's office does not have the means to redact information from the recording. Accordingly, we conclude, to the extent the information we have indicated pertains to a currently licensed

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<sup>1</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).

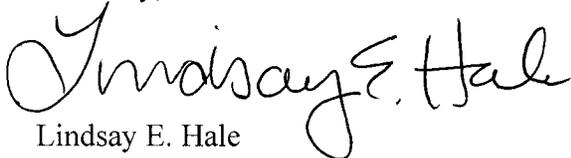
peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the recording we have indicated in its entirety under section 552.1175. If the individual whose information is at issue is no longer a licensed peace officer or no election is made, the sheriff's office may not withhold the information under section 552.1175.

In summary, if the information we have indicated pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the recording we have indicated in its entirety under section 552.1175 of the Government Code. The sheriff's office must release the remaining information.<sup>2</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/akg

Ref: ID# 540996

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to her client. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the sheriff's office receives another request for this information from an individual other than this requestor or her client, the sheriff's office must again seek a ruling from this office.