



February 23, 2015

Mr. Vance Hinds  
Assistant County and District Attorney  
Ellis County  
109 South Jackson Street  
Waxahachie, Texas 75165

OR2015-03551

Dear Mr. Hinds:

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# 554299.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to a named individual on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which you have marked, is not responsive to the instant request because it does not pertain to the date specified by the requestor. This ruling does not address the public availability of non-responsive information,

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<sup>1</sup>Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, .302. Further, although you also raise section 552.108(b)(1) and section 552.108(b)(2) of the Government Code as exceptions to disclosure, you provide no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. *See id.*

and the sheriff's office is not required to release non-responsive information in response to this request.<sup>2</sup>

Next, we note the requestor contends portions of the requested information were previously released to the public and are now in the public domain. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *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). The requestor states the sheriff's office produced dash camera videos that contain the motor vehicle information it now seeks to withhold under section 552.130 of the Government Code. However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We note the submitted information is not the exact information that was previously released. Further, we note the sheriff's office claims the information is excepted from disclosure pursuant to section 552.130 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See Gov't Code* § 552.101; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will consider the sheriff's office's arguments for the submitted information.

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

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<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of the non-responsive information.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Although you raise section 261.201, you have failed to demonstrate how the information you have marked was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the sheriff’s office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 reasonably 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 have marked pertains to pending criminal investigations or prosecutions. Based on your representation, we conclude the 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 generally applicable to the information you have marked.

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 have marked pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is generally applicable to the information you have marked.

However, you do not inform us a portion of the remaining responsive at issue pertains to an ongoing criminal investigation by the sheriff’s office. Thus, the sheriff’s office has not met its burden under section 552.108(a)(1). Further, you do not explain how the information at issue pertains to a criminal case that concluded in a final result other than conviction or deferred adjudication. Therefore, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Accordingly, the sheriff’s

office may not withhold this information, which we have marked for release, under section 552.108(a)(1) or section 552.108(a)(2) of the Government Code.

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 information subject to section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of basic information and the information we have marked for release, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) and section 552.108(a)(2) of the Government Code.<sup>3</sup>

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. The 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). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of basic information and the information we have marked for release, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) and section 552.108(a)(2) of the Government Code. The sheriff's

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

office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information you have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining responsive information.

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 554299

Enc. Submitted documents

c: Requestor  
(w/o enclosures)