



February 25, 2015

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

OR2015-03704

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# 557125.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor and "booking information for every inmate ever held in Ellis County Jail for extradition." The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

You inform us the sheriff's office asked the requestor to clarify some of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests

¹Although the sheriff's office also raises section 552.102 of the Government Code, the sheriff's office has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the sheriff's office no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You state the sheriff's office has not received a response to the request for clarification. Therefore, the sheriff's office is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the sheriff's office must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

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. This section encompasses information protected by other statutes, including federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential.² *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Upon review, we find you have failed to establish the information you have marked under section 6103(a) consists of tax return information that is subject to that section. Therefore, this information is not confidential under section 6103(a), and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of 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 law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. However, 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 you have not established the information you have marked under section 411.083 consists of CHRI for purposes of chapter 411. Therefore, this information is not confidential under section 411.083, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

You seek to withhold the requestor's fingerprints in the submitted information under chapter 560 of the Government Code, which is also encompassed by section 552.101 of the

²Although you assert some of the submitted information is confidential under section 610 of title 26 of the United States Code, we note there is no such section. We assume you intended to instead assert section 6103 of title 26 of the United States Code.

Government Code. Section 560.003 of the Government Code provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (defining “biometric identifier” to include fingerprints). Nevertheless, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, the sheriff’s office must release the requestor’s fingerprints to him under section 560.002 of the Government Code. *See id.* § 560.002.

Section 552.101 of the Government Code also encompasses constitutional privacy, which protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). 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 Fadlo 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 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 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, “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.” *Id.* Implicit in this holding is an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that 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 430, 428. Further, we recognized inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See* 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). Therefore, the sheriff's office must withhold the inmate visitor information we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy.³ However, we find the sheriff's office has failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

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. However, this office has determined the names, addresses, and telephone numbers of members of the public are generally not excepted from required public disclosure under common-law privacy. See Open Records Decision No. 551 at 3 (1990) (disclosure of persons name, address, or telephone number not an invasion of privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See ORD 455. Upon review, we find some of the submitted information, which 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 conclude the information you have marked under common-law privacy does not satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, this information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). You seek to withhold the telephone number of a district judge of Ellis County under section 552.117. However, this individual is not an employee of the sheriff's office. Therefore, the sheriff's office may not withhold this information

³As our ruling is dispositive, we do not address your other argument to withhold this information.

under section 552.117. Nevertheless, section 552.1175 may be applicable to this marked telephone number.⁴

Section 552.1175 of the Government Code 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. *See id.* § 552.1175. Section 552.1175 applies to state judges, as defined by section 13.0021 of the Election Code. *Id.* § 552.1175(a)(10); *see also* Elec. Code § 13.0021(2)(A). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Thus, the sheriff's office must withhold the telephone number of the district judge you have marked under section 552.1175 of the Government Code if (1) it consists of a home telephone number, (2) the district judge elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and (3) to the extent it is a cellular telephone number, the cellular telephone service is not paid by a governmental body. However, the sheriff's office may not withhold this information under section 552.1175 if (1) it does not consist of a home telephone number, (2) the district judge does not elect to restrict access to this information in accordance with section 552.1175(b), or (3) to the extent it is a cellular telephone number, the cellular telephone service is paid by a governmental body.

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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 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). However, the sheriff's office must withhold the remaining motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. We note the requestor has a right of access to his own e-mail address pursuant to section 552.137(b) of the Government Code. *See* Gov’t Code § 552.137(b). In addition, some of the information you have marked under section 552.137 does not consist of an e-mail address of a member of the public. Accordingly, the sheriff’s office may not withhold this information under section 552.137. Nevertheless, we agree the remaining information contains e-mail addresses of members of the public, and they do not appear to be of a type specifically excluded by section 552.137(c). The sheriff’s office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the sheriff’s office must withhold these e-mail addresses, which we have marked, under section 552.137 of the Government Code.

You seek to withhold the requestor’s social security number under section 552.147(b) of the Government Code, which 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 under the Act. *See id.* § 552.147(b). However, the requestor has a right to his own social security number. *See id.* § 552.023. Thus, the sheriff’s office may not withhold the requestor’s social security number under section 552.147.

To conclude, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with constitutional and common-law privacy. The sheriff’s office must withhold the telephone number of the district judge you have marked under section 552.1175 of the Government Code if (1) it consists of a home telephone number, (2) the district judge elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and (3) to the extent it is a cellular telephone number, the cellular telephone service is not paid by a governmental body. The sheriff’s office must also withhold the information the information we have marked under sections 552.130 and section 552.137 of the Government Code. The sheriff’s office must release the remaining information.⁵

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/>

⁵Because the requestor has a special right of access to some of the information being released, the sheriff’s office must again seek a decision from this office if it receives another request for the same information from another requestor.

[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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 557125

Enc. Submitted documents

c: Requestor
(w/o enclosures)