



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2015

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-05074

Dear Ms. Winn:

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# 556592.

The Travis County Sheriff's Office (the "sheriff's office") received a request for internal affairs records pertaining to a named sheriff's office employee.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the requestor narrowed the scope of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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, such as chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has previously determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us some of the submitted information in IA Case No. 2008-086 was redacted pursuant to an expunction order by sheriff’s office personnel prior to the sheriff’s office’s receipt of the instant public information request. You have provided our office with a copy of the order, which pertains to records relating to a specified criminal offense. Based on your representations, we agree the sheriff’s office must withhold the redacted information under section 552.101 in conjunction with article 55.03 of the Code of Criminal Procedure. You now claim the remaining information in IA Case No. 2008-086 is confidential under article 55.03. However, the information submitted to this office relates solely to an internal affairs investigation that was conducted by the sheriff’s office. This information does not

consist of expunged records. Therefore, the sheriff's office may not withhold the remaining information in IA Case No. 2008-086 under section 552.101 in conjunction with article 55.03.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). You assert a portion of the remaining information is subject to section 261.201(a). We note, however, the information at issue pertains to an internal affairs investigation. We find you have failed to demonstrate that any of the information at issue is a report of alleged or suspected child abuse or was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, section 261.201(a) is not applicable to any of the information at issue, and no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). Although you claim a portion of the remaining information is subject to section 552.108(a)(2), we note the information at issue pertains to an internal affairs investigation conducted by the sheriff's

office. You do not provide any arguments explaining how the internal affairs investigation resulted in criminal investigation or prosecution. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue, and the sheriff's office may not withhold this information on that basis.

Section 552.117(a)(2) of the Government Code exempts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). Additionally, we note section 552.117 is not applicable to a former spouse and does not protect the fact that a peace officer has been divorced. Upon review, we find most of the information you have marked, as well as the additional information we have marked, consist of information subject to section 552.117(a)(2). Accordingly, the sheriff's office must withhold most of the information you have marked, along with the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. We find you have failed to demonstrate any of the remaining information you seek to withhold, is subject to section 552.117(a)(2), and you may not withhold it on that basis.

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). However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance

of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). 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, you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"² Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the sheriff's office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

In summary, the sheriff's office must withhold the redacted information in IA Case No. 2008-086 under section 552.101 in conjunction with article 55.03 of the Code of Criminal Procedure. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked, along with the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. 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 information we have marked under section 552.102(a) of the Government Code. The sheriff's office must release the remaining 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/>

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, sweeping flourish at the end.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 556592

Enc. Submitted documents

c: Requestor
(w/o enclosures)

NOV 17 2016 ^{MR}

At 1:39 p.m.
Valva L. Price, District Clerk

CAUSE NO. D-1-GN-15-~~001200~~ 001533

GREG HAMILTON, TRAVIS COUNTY
SHERIFF,
Plaintiff,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

200th JUDICIAL DISTRICT

KEN PAXTON, STATE OF TEXAS
ATTORNEY GENERAL
Defendant.

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code Chapter 552. All matters in controversy between Plaintiff Greg Hamilton, Travis County Sheriff (the Sheriff) and Defendant, Ken Paxton, Attorney General of Texas (the Attorney General) have been resolved, and the parties agree to the entry and filing of an agreed final judgment. *See Exhibit A (Settlement Agreement).*

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after notice of the intent to enter into settlement is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by e-mail to requestor Andra Lim on October 21, 2016, providing reasonable notice of this setting. *See Exhibit B.* The requestor was informed of the parties' agreement that Sheriff may withhold the information at issue in this suit. The requestor was also informed of her right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of her intention to intervene, nor has a motion to intervene been filed.



After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

The Court therefore finds and orders that:

1. The Sheriff and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is generally excepted from disclosure pursuant to Tex. Gov't Code § 552.101 in conjunction with Tex. Code Crim. Pro. Art. 55.03 (hereinafter, the Excepted Information);

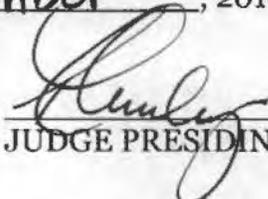
2. The Sheriff must withhold the Excepted Information described in Paragraph 1 of this order;

3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

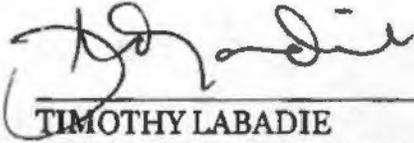
5. This Agreed Final Judgment finally disposes of all claims between the Sheriff and the Attorney General in this cause and is a final judgment.

Signed this 17 day of November, 2016.



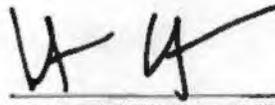
JUDGE PRESIDING

AGREED:



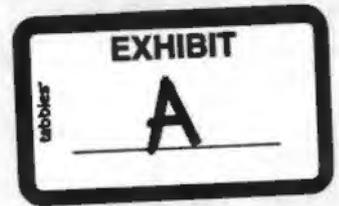
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ATTORNEY FOR DEFENDANT



CAUSE NO. D-1-GN-15-001200

GREG HAMILTON, TRAVIS COUNTY SHERIFF, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	200th JUDICIAL DISTRICT
	§	
KEN PAXTON, STATE OF TEXAS ATTORNEY GENERAL <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Greg Hamilton, Travis County Sheriff (the Sheriff) and Defendant, Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

BACKGROUND

The Sheriff received a written request for information from Andra Lim under the Public Information Act (PIA). The request was for records relating to a specified investigation.

The Sheriff asked for an open records ruling from the Attorney General pursuant to Texas Government Code section 552.301.

The Attorney General issued Letter Ruling OR2015-05074 (Letter Ruling) in response to the Sheriff's request. The ruling concluded that the information at issue must be disclosed to the requestor.

The Sheriff filed suit to challenge the Letter Ruling pursuant to Texas Government Code section 552.324.

The Sheriff submitted additional arguments and information to the Attorney General, demonstrating the information at issue was subject to an expunction order.

After reviewing the additional information and arguments, the Attorney General now agrees the Sheriff has established the information at issue is subject to article 55.03 of the Texas Code of Criminal Procedure.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

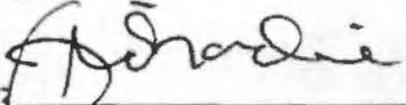
TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The information at issue is generally excepted from disclosure pursuant to Tex. Gov't Code § 552.101 in conjunction with Tex. Code Crim. Pro. Art. 55.03.
2. The Sheriff must withhold from the requestor the information described in Paragraph 1 of this Agreement.
3. The Sheriff and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as "Exhibit A."
4. The Attorney General agrees that he will notify the requestor, as required by Tex. Gov't Code Section 552.325(c), of the proposed settlement and of her right to intervene to contest the Sheriff's right to withhold the information from disclosure.
5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

6. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation.
7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.
8. The Sheriff warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Sheriff has against the Attorney General arising out of the matters described in this Agreement.
9. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the Sheriff arising out of the matters described in this Agreement.
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

GREG HAMILTON, TRAVIS COUNTY
SHERIFF

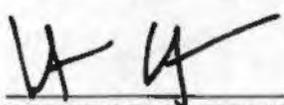
By: 

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Date: 28 September 2016

KEN PAXTON, STATE OF TEXAS
ATTORNEY GENERAL

By: 

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Date: October 21, 2016