



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2015

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

OR2015-05899

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# 557690.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to three specified charges against a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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). Generally, a governmental body claiming section 552.108 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 assert the information you have marked relates to a pending criminal investigation and prosecution and release would interfere with the case. Based upon these representations, we find the sheriff's office has demonstrated 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).

Section 552.108, however, 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 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may generally withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Next, we must address whether the requestor has a right of access to the information subject to section 552.108(a)(1) of the Government Code. In this instance, the requestor is an investigator for the Texas Education Agency (the "TEA"), which has assumed the duties of the State Board for Educator Certification (the "SBEC").¹ Section 22.082 of the Education Code provides the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information ["CHRI"] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code]." Educ. Code § 22.082. Section 411.090 of the Government Code grants the SBEC a right of access to obtain CHRI from the Texas Department of Public Safety (the "DPS") regarding persons who have applied to the SBEC. See Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by the DPS regarding certain school employees or applicants for employment. See *id.* § 411.0901. Pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to "obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency]." *Id.* § 411.087(a)(2). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). We note TEA states the individual at issue is seeking or currently holds a certificate.

We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give TEA a statutory right of access to portions of the information at issue. Cf. *Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Thus, we conclude the sheriff's office must release to this requestor information that shows the types of allegations made and whether there was an

¹The 79th Texas Legislature passed House Bill 1116, which required the transfer of the SBEC's administrative functions and services to the TEA, effective September 1, 2005.

arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). With the exception of basic information, the sheriff's office may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

You claim some of the remaining information, including portions of the basic information, are protected by common-law privacy. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S. W.2d 519 (Tex. App.-El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find some of the remaining information 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, the sheriff's office has failed to demonstrate any of the remaining information is confidential under common-law privacy. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the information you have marked in the remaining records under section 552.130 of the Government Code.

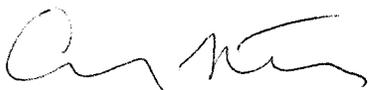
You have marked a social security number you assert is excepted under section 552.147(a) of the Government Code. Section 552.147 provides "the social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). The sheriff's office may withhold the social security number you have marked under section 552.147 of the Government Code.

To summarize: The sheriff's office must release to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. With the exception of basic information, the sheriff's office may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code. 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 you have marked in the remaining records under section 552.130 of the Government Code. The sheriff's office may withhold the social security number you have marked under section 552.147 of the Government Code. The sheriff's office must release the remaining information.²

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 557690

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. Accordingly, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.