



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Sheriff Buster Nixon
Mason County Sheriff's Office
P.O. Box 391
Mason, Texas 76856

OR2015-06119

Dear Sheriff Nixon:

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# 558338.

The Mason County Sheriff's Office (the "sheriff's office") received a request for the incident report and any written follow-up reports regarding a specified case.¹ 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 provides in relevant part the following:

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:

¹You inform us the sheriff's office sought and received clarification 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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for information, ten-day period to request an attorney general ruling is measured from date request is clarified or narrowed).

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication.

The sheriff's office claims the submitted information is excepted from disclosure under subsection 552.108(a)(2) of the Government Code. A governmental body claiming subsection 552.108(a)(2) must demonstrate that the information at issue 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 submitted report is not completed and it pertains to an investigation that has not resulted in prosecution or deferred adjudication. You further assert the information relates to an open case and the investigation is ongoing. Upon review, we conclude the sheriff's office has provided this office with conflicting arguments regarding the applicability of section 552.108 of the Government Code to the submitted information. *See id.* § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Therefore, we find the sheriff's office has not established the submitted information is excepted from disclosure under section 552.108 of the Government Code, and it may not be withheld on this basis.

You seek to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 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, telephone numbers, and dates of birth of members of the public are

generally not excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private).

Upon review, we find the sheriff's office has failed to demonstrate the information you seek to withhold is highly intimate or embarrassing information of no legitimate public concern. Thus, the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the driver's license and license plate information you have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the driver's license and license plate information you have marked under section 552.130 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/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# 558338

Enc. Submitted documents

c: Requestor
(w/o enclosures)