



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2015-06182

Dear Ms. Reingold:

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# 558217.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for five categories of information pertaining to officer involved shootings resulting in injury or death since 2004. You state you are releasing some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, 552.147, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The sheriff's office asserts most of the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code, which 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 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). The sheriff's office states, and provides documentation showing, the information at issue relates to concluded investigations and prosecutions by the Galveston County District Attorney's Office (the "district attorney's office") that did not result in a conviction or deferred adjudication. Further, the district attorney's office objects to disclosure of the information at issue. Based on these

representations, we conclude section 552.108(a)(2) is applicable to the information you have marked.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code on behalf of the district attorney's office.¹

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.” 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). Thus, under the Texas Comptroller decision, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by the employer in an employment context. The information you have marked under section 552.102 is held by the sheriff's office in a law enforcement context. Thus, we find the information you marked is not subject to section 552.102(a) of the Government Code, and the sheriff's office may not withhold it on that basis.

However, we note the date of birth you have marked may be excepted from disclosure under section 552.1175 of the Government Code.² 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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Thus, to the extent the officer whose information is at issue is a currently licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the date of birth we have marked under section 552.1175. If the peace officer whose information we have marked is no longer a licensed peace officer or no election is made, the sheriff's office may not withhold the information we have marked under section 552.1175.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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

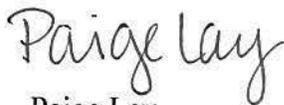
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the sheriff's office must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code on behalf of the district attorney's office. To the extent the officer whose information is at issue is a currently licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the date of birth we have marked under section 552.1175 of the Government Code. The sheriff's office must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 558217

Enc. Submitted documents

c: Requestor
(w/o enclosures)