



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2015

Deputy Danie Huffman
Public Information Officer
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2015-06510

Dear Deputy Huffman:

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# 558700.

The Parker County Sheriff's Office (the "sheriff's office") received a request for information pertaining to all incidents in which a law enforcement officer employed by the sheriff's office discharged a firearm resulting in injury or death of a human being from January 1, 2004 to the present. The sheriff's office informs us it will release some information, including the sheriff's office's records also in the possession of the Texas Rangers. The sheriff's office claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.115, 552.117, 552.1175, 552.129, 552.130, 552.147, and 552.152 of the Government Code.¹ We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

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 section 261.201 of the Family Code, which provides, in part, as follows:

¹We understand the sheriff's office to raise sections 552.1175 and 552.152 based on the substance of its arguments.

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the sheriff’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code, and the sheriff’s office must withhold it under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, we understand the sheriff’s office to assert section 552.152 of the Government Code for portions of the remaining information. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. The sheriff’s office contends some of the remaining information contains sensitive identifying information of certain officers, some of whom are currently involved in numerous active undercover operations and investigations. The sheriff’s office represents release of this information would subject these officers to a substantial threat of physical harm. Upon review, we conclude the sheriff’s office must withhold the information

²As our ruling is dispositive, we need not address the sheriff’s office’s remaining arguments against disclosure of this information.

we have marked and indicated under section 552.152 of the Government Code.³ However, we find the sheriff's office has failed to demonstrate how release of the remaining information at issue would subject any individual to a substantial risk of physical harm. Accordingly, the sheriff's office may not withhold any of this information under section 552.152 of the Government Code.

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. *Id.* § 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.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states "DVD-R, marked #16, Case File No. 2012-05212" pertains to a case that did not result in conviction or deferred adjudication. Based on your representations and our review, we find the sheriff's office may withhold "DVD-R, marked #16, Case File No. 2012-05212" under section 552.108(a)(2) of the Government Code.

Section 552.108(b), in part, excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" *Id.* § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency

³As our ruling is dispositive, we need not address the sheriff's office's argument against disclosure of this information.

must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The sheriff's office seeks to withhold the serial numbers of law enforcement weapons under section 552.108(b)(1) of the Government Code. The sheriff's office argues release of this information could allow anyone with access to use this information against law enforcement in future cases. Further, the sheriff's office seeks to withhold the names and identities of certain officers under section 552.108(b)(1) of the Government Code. The sheriff's office asserts "any suspect could use the knowledge of [the] identities to their advantage" and "deter law enforcement efforts concerning any future incidents and/or investigations." Upon our review of the information at issue, we find the sheriff's office has failed to establish how release of the information would interfere with law enforcement or crime prevention. Consequently, the sheriff's office may not withhold any of the information at issue under section 552.108(b)(1) of the Government Code.

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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations and procedures, and physical handicaps). However, the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))); *Houston Chronicle*, 531 S.W.2d at 186-187 (public has legitimate interest in details of crime and police efforts to combat crime in community). We note the common-law right to privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the remaining information is either not highly intimate or embarrassing, or is of legitimate public interest and thus, the sheriff's office may not

withhold any of it under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.1085 of the Government Code provides, in part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). Upon review, we find none of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the sheriff's office may not withhold any of the remaining photographs under section 552.1085(c) of the Government Code.

Section 552.115 excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" *Id.* § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the sheriff's office, the birth certificates the sheriff's office indicated may not be withheld on this basis.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(4). Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(4) of the Government Code.

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. *Id.* § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1).

Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988). Upon review, we find the information we have marked pertains to a peace officer that is not held by the sheriff's office in an employment capacity. Accordingly, the sheriff's office must withhold the marked cellular telephone number under section 552.1175 of the Government Code if the peace officer elected to restrict access to his information in accordance with section 552.1175(b) and a governmental body does not pay for the cellular telephone service. If the individual at issue did not elect to restrict access to his information in accordance with section 552.1175(b), or the cellular telephone service at issue is paid for by a governmental body, then the sheriff's office may not withhold the information we have marked under section 552.1175 of the Government Code.

Section 552.129 of the Government Code provides as follows:

A record created during a motor vehicle emissions inspection under Subchapter F, Chapter 548, Transportation Code, that relates to an individual vehicle or owner of an individual vehicle is excepted from [required public disclosure].

Gov't Code § 552.129. Upon review, we find the sheriff's office has failed to demonstrate how any of the remaining information constitutes a record created during a motor vehicle emissions inspection subject to section 552.129 of the Government Code. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.129 of the Government Code.

Section 552.130 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 id.* § 552.130. We note section 552.130 protects privacy, which is also a personal right that lapses at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Upon review, we find the sheriff's office must withhold the motor vehicle record information it has marked, as well as the additional information we have marked and indicated, under section 552.130 of the Government Code. However, none of the remaining information may be withheld under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Accordingly, the sheriff's office may withhold the social security numbers we have indicated under section 552.147 of the Government Code. However, the sheriff's office has failed to demonstrate how any of the remaining information consists of the social security number of a living individual and thus, none of it may be withheld on that basis.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we have marked and indicated under section 552.152 of the Government Code. The sheriff's office may withhold "DVD-R, marked #16, Case File No. 2012-05212" under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.117(a)(4) of the Government Code. The sheriff's office must withhold the marked cellular telephone number under section 552.1175 of the Government Code if the peace officer at issue elected to restrict access to his information in accordance with section 552.1175(b) and a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information it has marked, as well as the additional information we have marked and indicated, under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers we have indicated under section 552.147 of the Government Code. The sheriff's office must release the remaining responsive 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 558700

Enc. Submitted documents

c: Requestor
(w/o enclosures)