



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 4, 2015

Mr. Jorge L. Trevino, Jr.  
Assistant County Attorney  
Webb County Attorney's Office  
1110 Washington Street, Suite 301  
Laredo, Texas 78040

OR2015-08612

Dear Mr. Trevino:

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# 562280.

The Webb County Sheriff's Office (the "sheriff's office") received a request for all documents relating to disciplinary action taken against five named sheriff's deputies. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. Additionally, we understand you to contend release of the submitted information may implicate the privacy interests of the named sheriff's deputies. Accordingly, you notified the named sheriff's deputies of the request for information and of their right to submit written comments to this office stating why the information should or should not be released. *See* Gov't Code § 552.304. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to one of the named sheriff's deputies. To the extent responsive information relating to the remaining named sheriff's deputies existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the sheriff's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part, the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.<sup>1</sup>

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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has noted the public has a legitimate interest

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<sup>1</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

in information relating to those who are involved in law enforcement. *See, e.g.*, Open Records Decision No. 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). Further, we note the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Commc 'ns, 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))). Upon review, we find no portion of the remaining information to be highly intimate and embarrassing and of no legitimate public interest. Accordingly, the sheriff’s office may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. You argue portions of the remaining information are excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. In *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

You assert release of the information you have marked Exhibits 1 and 2 would endanger the deputy at issue due to his position at the Webb County Jail. You state release of this information could result in retaliation against the deputy at issue. However, upon review, we find you have failed to demonstrate how release of any portion of the information at issue would create a substantial threat of physical harm to the deputy at issue. Accordingly, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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.”<sup>2</sup> 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.*

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

*Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the sheriff's office must withhold date of birth we have marked under section 552.102(a) of the Government Code.<sup>3</sup>

Section 552.117(a)(2) of the Government Code excepts 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. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, we find none of the remaining information is subject to section 552.117(a)(2) of the Government Code. Accordingly, the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, date of birth, 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. *See id.* § 552.1175. Section 552.1175 applies, in part, to "employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]" *Id.* § 552.1175(a)(5). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.1175 if the individual whose information is at issue is an individual described by section 552.1175(a), and he elects to restrict access to his information in accordance with section 552.1175(b). If this individual is not described by section 552.1175(a), or no election is made, the sheriff's office may not withhold this individual's information under section 552.1175.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA, section 552.102(a) of the Government Code, and section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code if the individual whose information is at issue is an individual described by section 552.1175(a), and he elects to restrict access to his information in accordance with section 552.1175(b). 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.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 562280

Enc. Submitted documents

c: Requestor  
(w/o enclosures)