



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2015

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2015-11237

Dear Ms. Koonce:

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# 566309.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all information related to four named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, 552.147, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. Common-law privacy 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

¹Although the sheriff's office does not raise section 552.147 of the Government Code in its brief, we understand it to raise this exception based on its markings.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The doctrine of common-law privacy also protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals other than the requestor's client, thus implicating the named individuals' rights to privacy. We note, however, the requestor is the authorized representative of a parent of one of the named individuals, who is a minor. Thus, the requestor has a right of access to private information of his client's child pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles). Additionally, in this instance, we find the requestor is also seeking specific reports that involve his client or his client's child and the named individuals. Accordingly, this portion of the request does not implicate the remaining named individuals' rights to privacy and the sheriff's office may not withhold such information involving the requestor's client or his client's child and the remaining named individuals as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the reports involving the requestor's client or his client's child, to the extent the sheriff's office maintains unspecified law enforcement records depicting either of the remaining named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note the sheriff's office has submitted information related to incidents involving the requestor's client or his client's child and the named individuals. Accordingly, the sheriff's office may not withhold this information as a compilation under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in

Industrial Foundation. Accordingly, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 provides information that "relates to a motor vehicle accident reported under [chapter 550]" is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. Transp. Code § 550.065(a)-(b). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). A governmental entity may release information related to a reported accident only in accordance with subsections (c) and (e). *Id.* § 550.065(c), (e). Section 550.065(c)(4) provides a governmental entity shall release such information to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific address or the highway or street where the accident occurred. *Id.* § 550.065(c)(4).

In *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). The information at issue consisted of call-for-service and dispatch logs, and the requestor did not provide the requisite information pursuant to section 550.065(c)(4) to obtain the logs. The city argued the plain meaning of the phrase, "information that . . . relates to a motor vehicle accident" in section 550.065 includes *any* information pertaining to an accident reported under chapter 550, and thus, encompasses the information in its logs. Thus, the city contended the logs are confidential because the information relates to motor vehicle accidents reported under chapter 550. The court of appeals agreed with the city's interpretation of section 550.065. The court held the phrase "relates to" is "very broad" and the Legislature's use of the phrase "has the effect of broadening the scope of [s]ection 550.065 to render more than the actual accident reports confidential." *Id.* at 432. Because the court found the language in section 550.065 to be unambiguous and encompass more than the actual accident report required to be filed under chapter 550, it concluded the city's call-for-service and dispatch logs are confidential under section 550.065(b) of the Transportation Code. Relying on the court's interpretation of the broad scope of section 550.065, we construe the converse to be true when the requestor does provide the requisite information pursuant to section 550.065(c)(4). Thus based on the court's rationale, when a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident

required to be reported under chapter 550. Such a release is not limited to the accident report itself. *Id.* at 433.

A portion of the submitted information involves an accident as defined by chapter 550 of the Transportation Code. In this instance, the requestor has not provided the sheriff's office with two of the three pieces of required information pursuant to section 550.065(c)(4). Thus, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.108(a)(1) 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). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Your state report number 2014-09-00483 relates to a pending criminal investigation by the sheriff's office. Based upon your representation and our review, we conclude release of report number 2014-09-00483 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). Thus, section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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 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). Your state report numbers 2013-11-00622, 2013-11-00637, 2015-02-00775, and 2015-02-01046 relate to closed criminal cases that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, 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*. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold report number 2014-09-00483 under section 552.108(a)(1) and report

numbers 2013-11-00622, 2013-11-00637, 2015-02-00775, and 2015-02-01046 under section 552.108(a)(2) of the Government Code.³

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Gov’t Code § 411.083(a); *see also id.* § 411.082(defining CHRI). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* 28 C.F.R. § 20.21; Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (the “department”) maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the Federal Bureau of Investigation (“FBI”) number you have marked constitutes CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff’s office must withhold the fingerprint you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. *Id.* § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the sheriff's office must withhold the partial credit card numbers we have marked under section 552.136 of the Government Code. However, we find you have not demonstrated how the remaining information you marked consists of access device numbers for purposes of section 552.136. Accordingly, the sheriff's office may not withhold the remaining information you marked under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the sheriff's office may withhold the social security number you have marked under section 552.147 of the Government Code.

You seek to withhold the identifying information of an undercover officer from the submitted information under section 552.152 of the Government Code. 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.

Id. § 552.152. You represent the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code.

In summary, with the exception of the reports involving the requestor's client or his client's child, to the extent the sheriff's office maintains unspecified law enforcement records depicting either of the remaining named individuals as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. 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. The sheriff's office must withhold the information

we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of the basic information, which must be released, the sheriff's office may withhold report number 2014-09-00483 under section 552.108(a)(1) of the Government Code and report numbers 2013-11-00622, 2013-11-00637, 2015-02-00775, and 2015-02-01046 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the FBI number you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the fingerprint you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The sheriff's office must withhold the partial credit card numbers we have marked under section 552.136 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 withhold the identifying information of the undercover officer, which you have marked, under section 552.152 of the Government Code. The sheriff's office must release the remaining information.⁴

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/akg

⁴We note the requestor has a special right of access to some of the information being released pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k). If the sheriff's office receives another request for this information from a different requestor, it must again seek a ruling from this office.

Ref: ID# 566309

Enc. Submitted documents

c: Requestor
(w/o enclosures)