



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Ms. Susan Fillion  
Assistant County Attorney  
County of Harris  
Harris County Sheriff's Office  
1200 Baker Street  
Houston, Texas 77002-1206

OR2015-13017

Dear Ms. Fillion:

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# 569984 (HCSO File #14SO400216).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to complaints made against bondsmen or surety bond companies since January 1, 2014. The sheriff's office indicates it will redact the following: account numbers in accordance with section 552.136 of the Government Code, personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009), and social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have

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<sup>1</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.108(a) 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: (1) 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 the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The sheriff’s office states the information you have marked under section 552.108(a)(1) relates to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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 section 236.6 of title 8 of the Code of Federal Regulations, which provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [Immigration and Naturalization Service (“INS”)] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee.<sup>3</sup> Such information shall be under the control of [INS] and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall

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<sup>2</sup>We 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.

<sup>3</sup>We note the functions of INS were transferred to the Department of Homeland Security on March 1, 2003. *See Homeland Security Act of 2002*, Pub. L. No. 107-296, 116 Stat. 2135 (2002). However, as section 236.6 still refers to the agency at issue as “INS,” we also will do so in this ruling.

not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6. You seek to withhold information pertaining to an INS detainee, which you have marked pursuant to section 236.6. Based on your representatives, we agree the sheriff's office is required to abide by rules promulgated by the INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also* *ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). You assert no applicable federal law, regulation, or executive order provides the requestor with a right of access to the information at issue. Therefore, we conclude the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 236.6 of title 8 of the Code of Federal Regulations. *See* *ACLU*, 799 A.2d at 655 (concluding that because INS had authority to promulgate section 236.6, provision preempts state law requiring disclosure of requested information); *see also* *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS 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, but 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 DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally* *id.* §§ 411.090-411.127. 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. However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, the remaining information is not confidential under chapter 411, and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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. However, we conclude the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

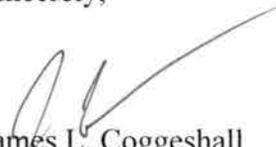
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The sheriff's office must withhold the motor vehicle record information, you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

To conclude, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 236.6 of title 8 of the Code of Federal Regulations and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must also withhold the information 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 569984

Enc. Submitted documents

c: Requestor  
(w/o enclosures)