



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County
901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3880

OR2015-17547

Dear Ms. Jimenez:

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# 577120.

The Nueces County Sheriff's Office (the "sheriff's office") received a request for seven categories of information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of completed investigations. This information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.103. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address your argument

under that exception. Additionally, because sections 552.101 and 552.102 of the Government Code can make information confidential under the Act, we will consider the applicability of these exceptions to the information at issue.¹

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

You state the submitted information pertains to a concluded investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to some of the submitted information, which we have marked. The remaining information, however, reflects it was generated as part of an internal investigation conducted by the sheriff’s office that was purely administrative in nature. Therefore, we find the sheriff’s office has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information. Accordingly, the sheriff’s office may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g 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 considered to be basic information). Thus, with the exception of basic information, the sheriff’s office may withhold the information we have marked under section 552.108(a)(2) of the Government Code.²

We note some of the remaining information is subject to section 552.102(a) of the Government Code, which excepts from disclosure “information in a personnel file, the

¹The 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).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

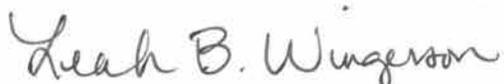
disclosure of which would constitute a clearly unwarranted invasion of personal privacy [.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). You have marked and indicated the dates of birth you seek to withhold in the remaining documents and audio recordings. You assert the sheriff’s office does not have the technological capability to redact the dates of birth from the audio recordings at issue. However, because the sheriff’s office had the ability to copy the audio recordings at issue for our review, we believe the sheriff’s office has the capability to produce a copy of only the non-confidential portions of the audio recordings. Therefore, the sheriff’s office must withhold the dates of birth you have marked in the remaining documents and indicated in the remaining audio recordings under section 552.102(a) of the Government Code.³

In summary, with the exception of basic information, the sheriff’s office may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The sheriff’s office must withhold the dates of birth you have marked in the remaining documents and indicated in the remaining audio recordings under section 552.102(a) 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

³As our ruling is dispositive, we need not address your argument against disclosure for this information.

Ref: ID# 577120

Enc. Submitted documents

c: Requestor
(w/o enclosures)