



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2015-19314

Dear Ms. Sheely:

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# 579578.

The Travis County Sheriff's Office (the "sheriff's office") received five requests from the same requestor for all police reports related to a specified address for a specified time period, a specified police report, and the employee development files of four named peace officers. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 the release of the requested information would interfere with law enforcement. *See id.*

¹Although you do not raise section 552.101 of the Government Code in conjunction with common-law privacy or section 552.147 in your brief, we understand you to claim these exceptions based on your markings in the submitted information. Additionally, although you raise section 552.1175 of the Government Code for information pertaining to a peace officer, we note section 552.117 is the proper exception to raise for information held in an employment context.

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you marked relates to active criminal investigations or prosecutions. Based on your representation, we conclude the release of the information at issue 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 the information you have marked.

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). You state report number 14-31315 pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to report number 14-31315.

However, we note 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 at 186-88; 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 the information you have marked under section 552.108(a)(1) of the Government Code and may withhold report number 14-31315 under section 552.108(a)(2) of the Government Code.

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.”² 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). Accordingly, the sheriff's office must withhold the employees' dates of birth we have marked in the remaining information under section 552.102(a) of the Government Code.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects

²The 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).

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 No. 455 (1987). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under sections 552.024 552.1175 of the Government Code. Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117(a)(2) is also applicable to personal cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We understand the individuals whose information is at issue are licensed peace officers as defined by article 2.12. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone numbers we have marked may not be withheld if a governmental body pays for the cellular telephone service.³ However, we find no portion of the remaining information is confidential pursuant to section 552.117(a)(2) of the Government Code, and the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov't Code § 552.117(a)(1); *see also id.* § 552.024(a-1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Upon

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

review, we find none of the remaining information at issue constitutes the home address or telephone number, emergency contact information, social security number, or family member information of a current or former official or employee of the sheriff's office under section 552.117(a)(1). Thus, the sheriff's office may not withhold any portion of the remaining information at issue under section 552.117(a)(1).

Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate release of the information you have marked would endanger the officers' lives or physical safety. Accordingly, the information you have marked may not be withheld under section 552.119 of the Government Code.

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(a). The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically

excluded by subsection (c). Gov't Code § 552.137(a)–(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release. However, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.137. Thus, the sheriff's office may not withhold any of the remaining information under section 552.137 of the Government Code.

In summary, with the exception of the basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code and report number 14-31315 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the employees' dates of birth we have marked in the remaining information under section 552.102(a) of the Government Code. 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 552.117(a)(2) of the Government Code; however, the cellular telephone numbers we have marked may not be withheld if a governmental body pays for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release. 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 579578

Enc. Submitted documents

c: Requestor
(w/o enclosures)