



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Mr. Daniel W. Ray
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Scott & Ray, PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2015-22650

Dear Mr. Ray:

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# 586973.

The Hunt County Sheriff's Office (the "sheriff's office"), which you represent, received a request for the internal investigation into a specified incident involving a named individual.¹ We understand the sheriff's office has released some responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's office's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state the sheriff's office received the request for information on August 22, 2015. Because the request was received on a Saturday, we will consider the request received on the first business day after that date, August 24, 2015. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office's ten-business-day deadline was September 8, 2015, and its fifteen-business-day deadline was September 15, 2015. Although the sheriff's office raised sections 552.103 and 552.108 of the Government Code before its ten-business-day deadline, as required by section 552.301(b), it did not raise sections 552.101 and 552.1175 of the Government Code until September 15, 2015. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the sheriff's office failed to comply with the procedural requirements of section 552.301(b) with respect to its claims under sections 552.101 and 552.1175. Further, as of the date of this ruling, you have not submitted a copy of the written request for information, as required by section 552.301(e). Consequently, we find the sheriff's office has also failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim sections 552.103 and 552.108 of the Government Code for the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as a result, they do not constitute compelling reasons to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); *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), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff's office may not withhold any portion of the submitted information under sections 552.103 and 552.108 of the Government Code. However, the sheriff's office also claims sections 552.101 and 552.1175 of the Government Code for the submitted information. Because these sections can provide

compelling reasons to overcome the presumption of openness, we will consider the applicability of these sections to the submitted information.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes a court-filed document that is subject to section 552.022(a)(17). The sheriff's office must release this information pursuant to section 552.022(a)(17), unless it is made confidential under the Act or other law. *See id.* Although the sheriff's office raises section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed document, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, the sheriff's office may not withhold any portion of the court-filed document, which we have marked, under section 552.101 in conjunction with common-law privacy. However, because section 552.1175 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed document. We will also address the sheriff's office's arguments against disclosure of the remaining information.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, 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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find you have failed to establish section 552.1175 is applicable to any of the information subject to section 552.022. Thus, the sheriff's office may not withhold any this information under section 552.1175. As you raise no further exceptions to disclosure, the court-filed document we have marked must be released pursuant to section 552.022(a)(17).

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. Section 552.101 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

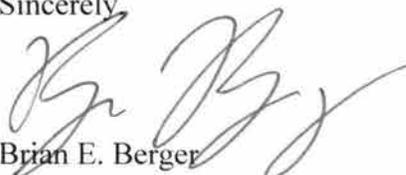
the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You assert that, in this instance, the requestor knows both the identity of the individual involved and the nature of the incident at issue. Furthermore, the sheriff's office has revealed the nature of the incident at issue in its brief. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, the sheriff's office must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. The sheriff's office must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

²As our ruling is dispositive, we do not address your other argument to withhold this information.

Ref: ID# 586973

Enc. Submitted documents

c: Requestor
(w/o enclosures)