



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2015

Ms. Susan Gómez
9-1-1/Communications Manager
Wise County Sheriff's Office
200 Rook Ramsey Drive
Decatur, Texas 76234

OR2015-23421

Dear Ms. Gómez:

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# 586223.

The Wise County Sheriff's Office (the "sheriff's office") received a request for information involving a named individual during a specified time period. We understand you have redacted some information pursuant to section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-23101 (2015). In that ruling, we determined the sheriff's office: (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) with the exception of basic information, may withhold the remaining information under section 552.108(a)(2) of the Government Code,

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

and (3) in releasing the basic information, must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the sheriff's office must rely on Open Records Letter No. 2015-23101 as a previous determination and withhold or release the identical information in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments for the remaining information, which was not subject to Open Records Letter No. 2015-23101.

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 101.003(a) (defining "child" for purposes of this section as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review we find no portion of the remaining information concerns an investigation under chapter 261 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred

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

adjudication. 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the remaining information consists of reports for criminal cases that did not result in conviction or deferred adjudication. Based on these representations and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to the remaining information.

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 Publishing 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense. *See id.* at 3–4. Some of the remaining information consists of call sheets. In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted dispatch report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Accordingly, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In this instance, the basic information contains information subject to section 552.101 of the Government Code, which also encompasses the doctrine of common-law privacy. Common-law privacy protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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 established. *See id.* at 681–82. The 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 the information we marked meets the standard articulated 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.

In summary, the sheriff's office must rely on Open Records Letter No. 2015-23101 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing

the basic information, 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.

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,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 586223

Enc. Submitted documents

c: Requestor
(w/o enclosures)