



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Ms. Crystal Koonce  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2016-01067

Dear Ms. Koonce:

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# 593965.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two specified incidents. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information protected by section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in pertinent part, as follows:

(a) The following information is confidential and not subject to disclosure under [the Act]:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an

investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subsection F [of chapter 48 of the Human Resources Code] is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made by the sheriff’s office generally are not subject to section 48.101. The submitted information was created by the sheriff’s office in connection with a criminal investigation conducted by the sheriff’s office. Although the sheriff’s office states a referral was made to the Adult Protective Services division of DFPS (“APS”) for the reports at issue, the sheriff’s office has not demonstrated the information at issue was used or developed in an investigation by APS under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Thus, the sheriff’s office has failed to demonstrate the submitted information pertains to investigations conducted by an entity authorized to conduct such an investigation under chapter 48. Accordingly, the sheriff’s office may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Your state report number 2015-03-01205 pertains to a pending criminal investigation. 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 at issue.

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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth. See ORD 127 at 3-4. Thus, with the exception of the basic information, you may withhold report number 2015-03-01205 under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). The remaining information includes video recordings containing motor vehicle record information. You state the sheriff's office does not have the technological capability to redact this information from the submitted video recordings. Accordingly, we find the sheriff's office must withhold the video recordings we have marked in their entirety under section 552.130 of the Government Code.<sup>2</sup>

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Further, in considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>3</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Upon review, we find

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

<sup>3</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

the information you marked and the additional information we have marked and indicated satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold public citizens' dates of birth within the remaining information, as well as the information you marked and the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, which must be released, the sheriff's office may withhold report number 2015-03-01205 under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the video recordings we have marked in their entirety under section 552.130 of the Government Code. The sheriff's office must withhold public citizens' dates of birth within the remaining information, as well as the information you marked and the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/akg

Ref: ID# 593965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)