



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Ms. Meredith L. Kennedy
Civil Chief
Criminal District Attorney's Office
Wichita County
900 Seventh Street
Wichita Falls, Texas 76301

OR2016-06843

Dear Ms. Kennedy:

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# 602991 (WC ORR.847).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for the procedure manuals used by both the sheriff's office and the Wichita County Jail. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.).

This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state portions of the submitted information, which you have indicated, if released, would “interfere with the detection, investigation, and prosecution of a crime.” Additionally, you argue “information related to jail policy and procedures could place inmates at an advantage in confrontations with officers and increase the possibility of an inmate injuring officers or others.” Further, you argue release of the information at issue would endanger the safety of officers. Based on your representations and our review, we agree the release of some of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, the sheriff’s office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated release of the remaining information you indicate would interfere with law enforcement or crime prevention. Accordingly, the sheriff’s office may not withhold any of the remaining information you indicated under section 552.108(b)(1).

We note some of the remaining information may be subject to sections 552.101 and 552.130 of the Government Code.¹ 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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

¹The 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).

interest substantially outweighed the negligible public interest in disclosure.² *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. The remaining information contains dates of birth, which we have marked. However, we are unable to determine whether the information at issue constitutes actual dates of birth or whether these are fictitious dates of birth created as a sample for training purposes. Thus, to the extent information we have marked constitutes real dates of birth of living individuals, the sheriff's office must withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state or another state or country[.]" See Gov't Code § 552.130(a)(2). The remaining information also contains motor vehicle record information, which we have marked. However, we are unable to determine whether the information at issue constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle information created as a sample for training purposes. Thus, to the extent the information we have marked constitutes real motor vehicle record information, the sheriff's office must withhold the marked information under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. To the extent information we have marked constitutes real dates of birth of living individuals, the sheriff's office must withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked constitutes real motor vehicle record information, the sheriff's office must withhold the marked information under section 552.130 of the Government Code. The remaining information must be released.

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

²Section 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).

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 "Gerald A. Arismendez". The signature is fluid and cursive, with the first name being the most prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 602991

Enc. Submitted documents

c: Requestor
(w/o enclosures)