



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Brendan W. Guy
Assistant Criminal District Attorney
Victoria County Criminal District Attorney's Office
205 North Bridge, Suite 301
Victoria, Texas 77901-8085

OR2016-10242

Dear Mr. Guy:

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# 608871.

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

Initially, we note the information we have marked is not responsive to the instant request because it does not pertain to the specified address. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

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). The sheriff's office

states the responsive information in Exhibit B relates to a pending criminal investigation. Upon review, we conclude the release of the information we have marked 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 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 we have marked in Exhibit B.

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 adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the information in Exhibits D and E pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. Thus, with the exception of basic information, which must be released, the sheriff's office may withhold the information we have marked in Exhibit B under section 552.108(a)(1) of the Government Code and Exhibits D and E under section 552.108(a)(2) 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, 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. Under the

¹As our ruling is dispositive, we do not address your other arguments to withhold this information. We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 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. 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 you have marked, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold the information we have marked in Exhibit B under section 552.108(a)(1) of the Government Code and Exhibits D and E under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information you have marked, and the additional 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 motor vehicle record information you have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining responsive information.

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).

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', with a stylized flourish extending to the right.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 608871

Enc. Submitted documents

c: Requestor
(w/o enclosures)