



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2016

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

OR2016-10696

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# 609928.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for call information pertaining to named individuals for a specified period of time.<sup>1</sup> The sheriff's office claims the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-08509 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the sheriff's office must rely on Open Records Letter No. 2016-08509 as a previous determination and withhold or release the identical information

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<sup>1</sup>The sheriff's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

in accordance with that ruling.<sup>2</sup> We will address the sheriff's office's arguments against the release of the submitted information that is not encompassed by Open Records Letter No. 2016-08509.

Next, we note some of the information at issue pertains to criminal investigations for which the statute of limitations for the underlying criminal offense has run. Thus, these criminal investigations are completed. The sheriff's office must release the submitted information pertaining to completed investigations pursuant to section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(1). Although the sheriff's office seek to withhold all of the information at issue under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, to the extent the information at issue pertains to concluded investigations, including those investigations for which the statute of limitations for the underlying criminal offense has run, this information is subject to section 552.022(a)(1) and the sheriff's office may not withhold it under section 552.103 of the Government Code. However, because section 552.101 of the Government Code makes information confidential under the Act, we will consider its applicability to the information at issue.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note the information the sheriff's office has marked under common-law privacy does not identify an individual. Upon review, we find none of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, this information is not

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<sup>2</sup>*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).

confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

Next, we address your argument under section 552.103 of the Government Code for the information not subject to section 552.022(a)(1). Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The sheriff's office has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The sheriff's office must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff's office states, and submits documentation showing, prior to the date it received the request for information, the requestor filed a lawsuit styled *Saturn v. Maddox*, Cause No. 3SC-15-1050, against a sheriff's office deputy, in his official capacity, in the Williamson County Justice of the Peace Court, Precinct 3. The sheriff's office states the information at issue relates to the pending litigation because it pertains to the contacts of the sheriff's office with the requestor and the underlying properties at issue in the lawsuit. Based on these representations, we find the sheriff's office has demonstrated the information at issue is related to pending litigation. Therefore, the sheriff's office may withhold the information not subject to section 552.022(a)(1) under section 552.103(a) of the Government Code.

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision

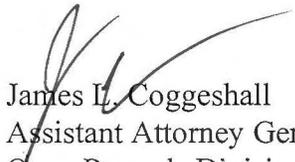
No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

To conclude, the sheriff's office must rely on Open Records Letter No. 2016-08509 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the remaining information pertains to concluded investigations and, thus, is subject to section 552.022(a)(1) of the Government Code, including those investigations for which the statute of limitations for the underlying criminal offense has run, the sheriff's office must release it. To the extent the remaining information does not pertain to concluded investigations and, thus, is not subject to section 552.022(a)(1) of the Government Code, the sheriff's office may withhold it under section 552.103 of the Government Code.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 609928

Enc. Submitted documents

c: Requestor  
(w/o enclosures)