



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Ryan S. Sullivan  
Public Information Officer  
Harris County Sheriff's Office  
1200 Baker Street, Second Floor  
Houston, Texas 77002-1206

OR2016-12394

Dear Mr. Sullivan:

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# 612400 (HCSO File No. 14SO500732).

The Harris County Sheriff's Office (the "sheriff's office") received a request for (1) information related to crimes of a specified nature which occurred at a specified location during a specified time period and (2) fifty-three specified offense reports. You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

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<sup>1</sup>The 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).

(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). We note Exhibit D1 relates to an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as 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), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold Exhibit D1 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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). You state, and provide documentation showing, although a conviction was obtained for the case in Exhibit B, the case at issue is currently on appeal. You also state Exhibits C-C7 pertain to active criminal investigations. We note, however, Exhibit C5 pertains to a simple assault that occurred on April 12, 2013. The statute of limitations for this offense is two years from the date of the offense. *See* Penal Code § 22.01(b) (offense under section 22.01(a)(1) is a Class A misdemeanor); Crim. Proc. Code art. 12.02(a) (indictment or information on a Class A misdemeanor may be presented within two years from the date of commission of offense, and not afterward). Thus, the statute of limitations for the offense in Exhibit C5 has expired. You have not informed this office any criminal charges were filed within the limitation period nor have you explained release of the information at issue would interfere with law enforcement. Consequently, we conclude the sheriff's office may not withhold Exhibit C5 pursuant to section 552.108(a)(1) of the Government Code. However, we note the statutes of limitations have not run for Exhibits B, C-C4, and C6-C7. Based on your representations and our review, we conclude the release of the information at issue would

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

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 Exhibits B, C-C4, and C6-C7.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibits D and D2-D5 pertain to closed cases that did not result in convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to Exhibits D and D2-D5.

However, we note, and you acknowledge, 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold Exhibits B, C-C4, and C6-C7 under section 552.108(a)(1) of the Government Code and may withhold Exhibits D and D2-D5 under section 552.108(a)(2) of the Government Code.

We note portions of Exhibit C5 are subject to sections 552.101 and 552.130 of the Government Code. Section 552.101 of the Government Code also 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 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. Thus, the sheriff's office must

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<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).

withhold the date of birth we have marked in Exhibit C5 under section 552.101 of the Government Code in conjunction with common-law privacy.

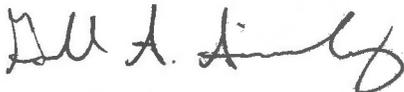
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of Exhibit C5 consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold Exhibit D1 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the sheriff's office may withhold Exhibits B, C-C4, and C6-C7 under section 552.108(a)(1) of the Government Code and may withhold Exhibits D and D2-D5 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the date of birth we have marked in Exhibit C5 under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we have marked 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 612400

Enc. Submitted documents

c: Requestor  
(w/o enclosures)