



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2016-13736

Dear Ms. Sheely:

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# 617930.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all records, with the exception of juvenile and medical records, related to a specified address on a specified day. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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 submitted information relates to an ongoing criminal investigation. Upon review, 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 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 submitted information.

Section 552.108, however, 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; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). However, basic information does not include dates of birth of public citizens. See *id.* Thus, with the exception of basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts "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. 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.¹ *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 you have not demonstrated any of the basic information being released is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Next, the sheriff's office asks this office to issue a previous determination permitting it to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to

¹Section 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).

previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time.

Finally, the sheriff's office asks us to issue a previous determination permitting the sheriff's office to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); *Houston Chronicle v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states "[t]he attorney general shall maintain uniformity in the application, operation, and interpretation" of the Act, chapter 552 of the Government Code. Gov't Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to "prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on" the Act. *Id.* We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. *Id.* § 552.221(a); Open Records Decision No. 664 at 5 (2000).

With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the sheriff's office to withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting an attorney general decision, so long as the sheriff's office has not previously received a request for the information from the same requestor in the manner described below. See ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the sheriff's office may withhold under the circumstances delineated below. See Gov't Code §§ 552.011, .221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the sheriff's office may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:

1. the sheriff's office makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime, and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;
2. the sheriff's office will release at least the basic information about an arrested person, an arrest, or a crime (the "releasable information") from the requested information;

3. the sheriff's office will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;
4. the sheriff's office will provide the requestor with the notice included in Appendix A of this ruling when the sheriff's office responds to the request pursuant to the requirements of this previous determination; and
5. the sheriff's office has not previously received a request for the same information from the same requestor after the sheriff's office has provided the requestor with the releasable information.

See Gov't Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the sheriff's office may not rely upon this ruling as a previous determination to withhold the information at issue. *See* ORD 673 at 7. Additionally, the sheriff's office may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the sheriff's office may not rely upon this previous determination in response to those types of requests. Furthermore, this previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. *See, e.g.*, Crim. Proc. Code arts. 2.139 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov't Code §§ 411.081-.1410 (detailing rights of access to criminal history record information), 560.002(1)(A) (detailing rights of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. *See, e.g.*, Fam. Code §§ 58.007 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body was required to withhold the information in its entirety). We further note this previous determination does not permit the sheriff's office to withhold citations; DIC-24 statutory warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code violations; triplicate forms; or information subject to section 552.007 or section 552.022 of the Government Code, other than information subject to section 552.022(a)(1). *See* Gov't Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous determination does not preclude the sheriff's office from withholding

information pursuant to other statutory authority or previous determinations that apply to the sheriff's office. *See, e.g., id.* §§ 552.1175(f), .130(c), .136(c), .147(b); ORD 684.

If the sheriff's office's use of this previous determination does not fall within all of the circumstances delineated above, the requirements of the Act apply, including section 552.301 of the Government Code, and deadlines under the Act run from the date the sheriff's office received the initial written request for information. *See* Gov't Code § 552.301(a); *Mattox*, 767 S.W.2d at 698. Consequently, misapplication of this previous determination may result in the presumption the requested information is public. *See* Gov't Code § 552.302. Thus, if the sheriff's office is unsure as to the applicability of this previous determination to information responsive to a request for information, the sheriff's office should request a ruling from this office. Additionally, this office may modify or withdraw this previous determination for any reason, including, but not limited to, misapplication of this previous determination. *See id.* § 552.011; *Mattox*, 767 S.W.2d at 698; *see also* Open Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the sheriff's office later requests a ruling from this office in response to a second request for the same information from the same requestor, the sheriff's office should notify this office it relied upon this previous determination in its response to the initial request.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 617930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Appendix A

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Date

Requestor name

Requestor address 1

Requestor address 2

Requestor city, state zip

Dear M:

NOTICE:

On [date], we received your public information request for [description of information requested], dated [date request written] (the “request”). In order to promote governmental efficiency and encourage the prompt release of information, as required by the Public Information Act, we have relied upon Open Records Letter No. 2016-13736 (2016) in responding to your request. We do so within five business days of your request.

The sheriff’s office has made a good faith determination the information you requested:

- deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

This information is subject to section 552.108(a)(1) of the Government Code. The sheriff’s office has also determined you have not previously requested this information.² Therefore, pursuant to the previous determination granted by the Office of the Attorney General in Open Records Letter No. 2016-13736, the sheriff’s office is releasing some information to you, and is withholding the remaining responsive information subject to section 552.108(a)(1) of the Government Code.

Please note, we are withholding the following specified types of information:

- | | |
|---|--|
| <input type="checkbox"/> Incident report (except basic information) | <input type="checkbox"/> Other: (specify documents withheld) |
| <input type="checkbox"/> Witness/suspect interview(s) | _____ |
| <input type="checkbox"/> Video recording(s) | _____ |
| <input type="checkbox"/> Audio recording(s) | _____ |

If you have questions regarding the use of this previous determination, please call the sheriff’s office at XXX-XXX-XXXX, or for more information concerning your rights and the responsibilities of the sheriff’s office, please visit the Office of the Attorney General’s website at <https://www.texasattorneygeneral.gov/og/information-about-552.108a1-previous-determinations>, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. You may also review general information about the Public Information Act, including the types of information included in basic information, in the 2016 Public Information Handbook at http://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf.

¹ If you request this information a second time, the sheriff’s office must request a ruling from the Office of the Attorney General (the “OAG”) in order to withhold the information. See Open Records Letter No. 2016-13736.