



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Deputy Danie Huffman
Public Information Officer
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2016-15265

Dear Deputy Huffman:

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# 617220.

The Parker County Sheriff's Office (the "sheriff's office") received a request for (1) all documents, communications, and video recordings pertaining to a named former deputy during a specified time period; (2) all personnel or internal files pertaining to a named former deputy during a specified time period; and (3) information pertaining to specified addresses and specified incidents. You state some of the requested information does not exist and the sheriff's office does not have possession of some of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise section 552.021 of the Government Code, we note section 552.021 is not an exception to disclosure. Rather, this provision provides that public information is available during normal business hours. *See Gov't Code § 552.021.*

We note some of the information at issue was the subject of previous requests for a ruling, as a result of which this office issued Open Records Letter Nos. 2016-13351 (2016) and 2016-12088 (2016). In those rulings, we determined the sheriff's office must withhold portions of the information at issue under sections 552.101, 552.1175, and 552.130 of the Government Code and must release the remaining responsive information. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the sheriff's office must continue to rely on Open Records Letters No. 2016-13351 and 2016-12088 as previous determinations and withhold or release the information at issue in accordance with those rulings.³ 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous rulings.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the sheriff's office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.⁴ However, we find none of the remaining information is subject to section 552.102(a) of the Government Code and the sheriff's office may not withhold any of the remaining information on that basis.

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 the submitted information pertains to "incidents [that] did not or have not resulted in arrest, prosecution, conviction, or deferred adjudication." We note, however, section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case that "*did not result* in conviction or deferred adjudication." See

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

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id. § 552.108(a)(2) (emphasis added). Further, you do not explain or indicate whether the information at issue pertains to closed criminal cases. Thus, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(a)(2) of the Government Code.

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. *Id.* § 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 explain 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 (Tex. 1977). 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 at 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.*, ORDs 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 assert the information you have indicated, if released, would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would "permit private citizens to anticipate potential weaknesses in [the sheriff's office], and could avoid detection, jeopardize officer safety, and generally undermine [the sheriff's office's] law enforcement efforts[.]" You also state the release of the information at issue "would provide an advantage to criminal suspects during confrontations with police officers and could increase the chance of injury to police officers . . . impairing an officer's ability to safely handle confrontations with criminal suspects." 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 have marked under section 552.108(b)(1) of the Government Code.⁵

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

However, we find you have not demonstrated how any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff's office may only withhold the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for his information was made. As the individual at issue made a timely election under section 552.024, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code.⁶ However, we find the remaining information is not subject to section 552.117(a)(1) of the Government Code and it may not be withheld on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or information that reveals whether the individual has family members, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining responsive information relates to an officer subject to section 552.1175. You inform us, and provide documentation showing, the officer at issue has elected to restrict access to the information in accordance with section 552.1175(b). Accordingly, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code.⁷ However, we find you have not demonstrated the remaining responsive information pertains to the types of individuals to whom section 552.1175 applies. As such, the sheriff's office may not withhold any of the remaining responsive information on this basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁷As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

issued by this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁸ However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the sheriff's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.139(b)(3) of the Government Code provides "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential.⁹ *Id.* § 552.139(b)(3). Accordingly, the sheriff's office must withhold the identification badge we have marked under section 552.139(b)(3) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. We understand the sheriff's office raises section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. You argue releasing any portion of the remaining information would place a named individual at risk for injury. However, upon review, we conclude the sheriff's office has not demonstrated release of any of the remaining information would subject anyone to a specific risk of harm. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.101 of the Government Code also 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

⁸As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). 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. *Indus. Found.*, 540 S.W.2d 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.¹⁰ *Tex. 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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy.¹¹ However, we find the sheriff's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must rely on Open Records Letter Nos. 2016-13351 and 2016-12088 as previous determinations and withhold or release the information at issue in accordance with those rulings. The sheriff's office must withhold the date of birth we have marked under section 552.102 of the Government Code. The sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. As the individual at issue made a timely election under section 552.024, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the identification badge we have marked under section 552.139(b)(3) of the Government Code. The sheriff's office must withhold the

¹⁰Section 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).

¹¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information we marked, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 617220

Enc. Submitted documents

c: Requestor
(w/o enclosures)