



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Mr. Paul A. Ready  
Galveston County  
722 Moody Street 5<sup>th</sup> Floor  
Galveston, Texas 77550

OR2016-16906

Dear Mr. Ready:

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# 620165.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident and the personnel records of specified officers. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains information subject to section 552.022 of the Government Code, which provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information contains completed evaluations which are subject to section 552.022(a)(1) and court-filed documents that are subject to section 552.022(a)(17). The sheriff's office must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). The sheriff's office must release the information subject to section 552.022(a)(17), which we have marked, unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although the sheriff's office seeks to withhold the information subject to section 552.022 under section 552.103 of the Government Code, and seeks to withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff's office may not withhold the information subject to section 552.022 under section 552.103 or the information subject to section 552.022(a)(17) under section 552.108 of the Government Code. We also note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). However, because sections 552.130 and 552.136 of the Government Code make information confidential for purposes of section 552.022, we will address their applicability to the court-filed documents subject to section 552.022(a)(17).<sup>1</sup> Further, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the assertion of section 552.108 for the information subject to section 552.022(a)(1). Additionally, we will address the arguments for the information that is not subject to section 552.022.

Section 552.108(a) 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: (1) 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 information at issue 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, 710 (Tex. 1977). The sheriff's office states the information you marked relates to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of the information you marked would interfere

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<sup>1</sup>The 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).

with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information you have marked.

However, section 552.108 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the sheriff's office may withhold the information it has marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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). 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 generally withhold the public citizens' dates of birth it marked 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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

<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).

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(a). The sheriff's office must withhold the motor vehicle record information we have marked in the court-filed documents and must generally withhold the motor vehicle information you have marked under section 552.130 of the Government Code.

However, we note the date of birth and motor vehicle record information of the requestor's client is contained within the remaining information. We note common-law privacy and section 552.130 protect personal privacy. Thus, the requestor has a right of access to his client's date of birth and motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the sheriff's office may not withhold the requestor's client's information from the requestor under section 552.101 on the basis of common-law privacy or under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, we find the sheriff's office must withhold the information we have marked in the court-filed documents under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Accordingly, the sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code.

In summary, the sheriff's office must release the marked court-filed documents, which we have marked, pursuant to section 552.022(a)(17) of the Government Code; however, in releasing these documents, the sheriff's office must withhold the marked motor vehicle record information under section 552.130 of the Government Code and the information we have marked under section 552.136 of the Government Code. With the exception of basic information, the sheriff's office may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. The sheriff's office must generally withhold the public citizens' dates of birth it 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 we have marked and must generally withhold the motor vehicle information you have marked under section 552.130 of the Government Code. However, the sheriff's office may not withhold the date of birth and motor vehicle information pertaining

to the requestor's client. The sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code. The remaining information must be released.<sup>4</sup>

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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 620165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4.