



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. D. Armstrong
Admin Assistant
Criminal Division
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2016-22692

Dear Ms. Armstrong:

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# 631493.

The Hood County Sheriff's Office (the "sheriff's office") received a request for information pertaining to the requestor, another named individual, and two specified addresses for a delineated period of time. The sheriff's office states some of the requested information is not available.¹ The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the sheriff's office informs us the submitted information consists of completed investigations. Section 552.022(a)(1) of the Government Code reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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[.]

Gov't Code § 552.022(a)(1). Although the sheriff's office asserts the submitted information is excepted from disclosure under section 552.103, this section is discretionary and does 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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the submitted information under section 552.103. However, section 552.101 makes information confidential under the Act, and information subject to section 552.022(a)(1) may be withheld under section 552.108. Accordingly, we will consider the applicability of these sections to the information at issue.

Next, the sheriff's office states it released some of the submitted information to the requestor in response to a previous request for this information under the Act. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* ORD 665. As such, section 552.108 does not expressly prohibit the release of the submitted information or make the information confidential. Accordingly, the sheriff's office may not withhold the previously-released information, which it has marked, under section 552.108. However, section 552.101 makes information confidential under the Act. Therefore, we will consider the applicability of this exception to the information that the sheriff's office previously released. Nevertheless, we will first address the sheriff's office's arguments under section 552.108 for the information that was not previously released.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the submitted information that it did not previously release pertains to cases that concluded in

results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 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, the sheriff's office may withhold the submitted information that it did not previously release under section 552.108(a)(2) of the Government Code.²

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). Upon review, we find none of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

To conclude, the sheriff's office must provide to the requestor the information that it previously released. With the exception of basic information, which the sheriff's office must release, the sheriff's office may withhold the remaining information under section 552.108(a)(2) 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/>

²As our ruling is dispositive, we do not address the other argument of the sheriff's office to withhold this information.

[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/bw

Ref: ID# 631493

Enc. Submitted documents

c: Requestor
(w/o enclosures)