



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
916 Main Street, Suite 1018
Lubbock, Texas 79401

OR2009-14681

Dear Ms. Clarke:

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# 358481.

The Lubbock County Sheriff's Office (the "sheriff") received a request for all call reports to the requestor's residence during a specified period of time. We understand that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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:

(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). Upon review, we find that a portion of the submitted information, which we have marked, was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Accordingly, we find that this call sheet is within the scope of section 261.201 of the Family Code. You do not indicate that the sheriff has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude that the call sheet we have marked is confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold the call sheet we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as the term is defined in

Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). A portion of the remaining call sheets involve juvenile delinquent conduct that occurred after September 1, 1997. Therefore, these call sheets are generally confidential pursuant to section 58.007 of the Family Code. However, we note that the requestor is the parent of a juvenile involved in some of the incidents in the call sheets. Therefore, the requestor has a right to inspect or copy law enforcement records concerning her child under section 58.007(e). *See id.* § 58.007(e). Although section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted, the sheriff claims no other exception to disclosure of the information at issue. Accordingly, the call sheets which involve juvenile delinquent conduct involving the requestor's child must be released. The call sheet which concerns juvenile delinquent conduct not involving the requestor's child, which we have marked, must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders,

attempted suicide, and injuries to sexual organs. *Id.* at 683. We find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, this information is generally confidential under common-law privacy. However, we note that the requestor may be the parent of the individual whose privacy interests are at issue. As such, she may have a special right of access to the information subject to common-law privacy as her child's authorized representative. *See* Gov't Code § 552.023(a). If the requestor has a right of access under section 552.023, then the sheriff may not withhold the information at issue on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself. If the requestor is not the individual's authorized representative, then the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(1), (2). We have marked Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

In summary, the sheriff must withhold the call sheet we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the call sheet we have marked under section 552.101 of the Government Code in conjunction with 58.007(c) of the Family Code. If the requestor is not the authorized representative of the individual to whom the information we have marked under common-law privacy pertains, then the sheriff must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

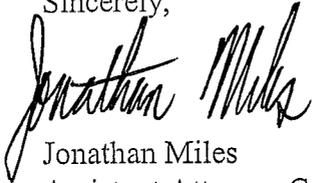
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹The Office of the Attorney General will raise a mandatory exception such as section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² We note that because the requestor has a special right of access to this information in this instance, the sheriff must again seek a decision from this office if it receives another request for the same information from a different requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 358481

Enc. Submitted documents

c: Requestor
(w/o enclosures)