



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 20, 2010

Ms. M. Ann Montgomery
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2010-05654

Dear Ms. Montgomery:

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# 376539.

The Ellis County Sheriff's Office (the "sheriff") received a request for report number C09-16730. You claim the submitted report and related documents are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Although the submitted report and related documents contain references to an individual's suspicions concerning abuse of a child, the submitted documents pertain to a child custody issue. The report and related documents do not reflect, nor have you explained, how they were used or developed in an investigation of child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, the submitted records are not confidential in their entirety under section 261.201(a). However, portions of the report and related documents contain a report of alleged or suspected child abuse. Ordinarily, the sheriff could not withhold the report of abuse from the requestor, because the requestor is the managing conservator of the child listed in the report and is not alleged to have committed the suspected abuse. *Id.* § 261.201(k). In this instance, however, the portions of the report referencing the alleged or suspected child abuse contain information that identifies the reporting party. Before information relating to a report of abuse or neglect may be released to a parent or managing conservator, the reporting party's identifying information must be redacted. *Id.* § 261.201(l)(3). We have marked the information which identifies the reporting party; this information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

You also assert a portion of the submitted documents is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold records that were created by other law enforcement entities under section 552.108. You have not, however, submitted any arguments explaining how the release of these records would interfere with the detection or investigation of crime by the sheriff. Moreover, you have not submitted any representations from any other law enforcement entity explaining how release of these records would interfere with their detection, investigation, or prosecution of crime. Accordingly, you have failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue, and the sheriff may not withhold any portion of the submitted documents on that basis.

We will next address your arguments under common-law and constitutional privacy. Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or 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. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find some of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

Constitutional privacy under section 552.101 protects two kinds of interests: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of a personal matter. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7.

This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). You have not explained how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, none of this information may be withheld under section 552.101 on the basis of constitutional privacy.

Finally, you marked a state identification number under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver's license, permit, or personal identification document issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (3). Thus, the sheriff must withhold the state identification number you marked pursuant to section 552.130.

In summary, the sheriff must withhold the identifying information of the reporting party we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the state identification number you marked under section 552.130. The remaining information must be released.

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.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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 376539

Enc. Submitted documents

c: Requestor
(w/o enclosures)