



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2011 - 04107

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# 412269.

The Ellis County Sheriff's Office (the "sheriff") received a request for all police reports and 9-1-1 records involving a named individual. You state the sheriff has released some of the responsive documents. You claim the remaining responsive 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* Information protected under constitutional privacy must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765

F.2d 490 (5th Cir. 1985)). In this instance, you have not provided any arguments demonstrating how constitutional privacy applies to the information at issue. Accordingly, no information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 58.007 of the Family Code provides in part:

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). In this instance, you generally claim the submitted information is confidential pursuant to section 58.007. However, the submitted information does not identify any criminal suspects between the ages of ten and sixteen. Additionally, you provide no arguments explaining how section 58.007 is applicable to this information. Therefore, we conclude none of the submitted information is confidential under section 58.007, and no information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Id. § 261.201(a). Upon review, we find the submitted information consists of information used or developed in investigations by the sheriff of child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is within the scope of section 261.201. You do not indicate the sheriff has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we find the submitted information is confidential in its entirety pursuant to section 261.201 of the Family Code. However, section 261.201 of the Family Code also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.*

We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”¹ *See* Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

¹A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note that "criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, the information at issue contains "criminal history record information." However, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

In this instance, the requestor is a representative of the Dallas County Domestic Relations Office (the "office") and states she is conducting a court ordered social study. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the sheriff determines the information at issue relates to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203 of the Family Code, and release of the information is consistent with chapter 261 of the Family Code, then we find this requestor has a right of access to the criminal history records contained in this information. Although you also raise other exceptions to disclosure of such information, the requestor's statutory right of access prevails over the Act's general exceptions to disclosure and the doctrine of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, if the sheriff determines the information at issue relates to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203, and release of the information is consistent with chapter 261, you must release information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. In such case, the sheriff must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

²As we are able to make this determination, we need not address your other arguments against disclosure.

However, if the sheriff determines either that the information at issue does not relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203 of the Family Code or that disclosure of the information at issue is not consistent with chapter 261 of the Family Code, then the sheriff must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 412269

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As we are able to make this determination, we need not address your other arguments against disclosure.