



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2011

Ms. Tamma Willis  
McLennan County Sheriff's Office  
901 Washington Avenue  
Waco, Texas 76701

OR2011-18045

Dear Ms. Tamma Willis:

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# 438234.

The McLennan County Sheriff's Office (the "sheriff") received a request for 40 offense reports specified by case numbers.<sup>1</sup> You claim the submitted offense reports are 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. This section encompasses information made confidential by other statutes, such as 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,

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<sup>1</sup>The requested case numbers are 09-2164, 09-1353, 09-1208, 09-0895, 09-0871, 09-0475, 09-0443, 09-0309, 09-0221, 09-0182, 09-0171, 09-0111, 09-0105, 08-2966, 08-2590, 08-2554, 08-2436, 08-2344, 08-2232, 08-2223, 08-1886, 08-1788, 08-1778, 08-1253, 08-1019, 08-0836, 08-0706, 08-0573, 08-0542, 08-0438, 07-3406, 07-3265, 07-3104, 07-2990, 07-2770, 07-2386, 07-2373, 07-1792, 07-1384, and 07-0938.

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). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim some of the submitted reports are confidential under section 58.007. Upon review, we find most of the reports involve suspects or arrestees between the ages of thirteen and sixteen suspected of or arrested for various crimes. Thus, we find those reports, which we have marked, involve juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the reports we have marked are confidential under section 58.007(c) of the Family Code, and the sheriff must withhold the reports under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides, in relevant part:

- (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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

*Id.* § 261.201(a). You generally assert some of the remaining reports are confidential under section 261.201. Upon review, some of the reports, which we have marked, reflect they were used or developed in investigations by the sheriff of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 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).

Section 261.201, however, does not apply to investigations of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). The reports we have marked reflect the alleged incidents of abuse occurred at a residential treatment center, but do not reveal whether that facility was regulated under chapter 42 at the time of the incidents. *See Hum. Res. § 42.002(4)* (“general residential operation” includes a residential treatment center). In this instance, we are unable to determine whether the facility was regulated under chapter 42. Thus, if the sheriff determines the facility at which the alleged abuse occurred was not regulated by chapter 42 of the Human Resources Code, the sheriff must withhold the reports we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). You have not demonstrated the remaining submitted reports were used or developed in investigations of alleged child abuse or neglect. Consequently, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the sheriff determines the facility at which the alleged abuse occurred was regulated by chapter 42 of the Human Resources Code, section 261.201 of the Family Code is not applicable to the reports we have marked and the sheriff may not withhold those reports under section 552.101 of the Government Code on that basis. We note, however, some of the information in those reports, along with the remaining submitted reports, is subject to other exceptions to disclosure, which we will address.

Section 552.101 also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See Fam. Code § 261.101(d)*. We have marked the identifying information of such an individual in one of the remaining reports. Therefore, the sheriff must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.101(d) of the Family Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs medical records. *See Occ. Code §§ 151.001-167.202*. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). The remaining information contains an individual's medical records, which we have marked. The sheriff may release the marked medical records only in accordance with the MPA. ORD 598.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS

or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The remaining information contains information that constitutes CHRI that is confidential under chapter 411. Accordingly, the sheriff must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

The remaining information contains a fingerprint. Section 552.101 also encompasses section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Therefore, the sheriff must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.<sup>2</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Further, this office has found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. The remaining information contains information we find is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>2</sup>This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including fingerprints under section 552.101 in conjunction with section 560.003, without the necessity of requesting an attorney general decision.

The remaining information contains driver's license numbers. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release.<sup>3</sup> Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)). Therefore, the sheriff must withhold the driver's license numbers we have marked in the remaining information under section 552.130 of the Government Code.

The remaining information includes an e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not specifically excluded by section 552.137(c). As such, the sheriff must withhold this e-mail address, which we have marked, under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.<sup>4</sup> *See id.* § 552.137(b).

In summary, the sheriff must withhold the offense reports we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the sheriff determines the facility at which the alleged child abuse occurred was not regulated by chapter 42 of the Human Resources Code, the sheriff must withhold the reports we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the sheriff determines the facility was regulated by chapter 42, the sheriff (1) must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.101(d) of the Family Code; (2) may release the marked medical records only in accordance with the MPA; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (4) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (5) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) must withhold the driver's license numbers we have marked under section 552.130 of the Government Code; and (7) must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

address has affirmatively consented to its release. The sheriff must release the remaining information.<sup>5</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.oag.state.tx.us/open/index\\_orl.php](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/em

Ref: ID# 438234

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>The remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).