



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2012

Ms. M. Ann Montgomery-Moran  
Assistant County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165-5140

OR2012-07122

Dear Ms. Montgomery-Moran:

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# 454147.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for an arrest report related to the requestor. You claim some of the requested information is 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. The relevant language of section 58.007 of the Family Code reads as follows:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by 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 a 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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). But 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. *See id.* § 58.007(j)(2).

The submitted documents involve juvenile conduct occurring after September 1, 1997. Therefore, the submitted information is subject to section 58.007. However, the requestor is the juvenile suspect. Thus, the information may not be withheld under section 552.101 of the Government Code on that ground. However, the personally identifiable information concerning a juvenile witness in the submitted information, which we have marked, must be redacted under section 552.101 of the Government Code in conjunction with section 58.007(j)(1). *Id.* § 58.007(j)(1). In addition, pursuant to section 58.007(j)(2), we will address your other arguments to withhold the submitted information. *See id.*

You seek to withhold the information you have marked under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us the information you have marked under section 552.108(a)(2) pertains to a case that resulted in a deferred prosecution agreement, and the terms of the deferred prosecution agreement have been completed without the case concluding in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information. Accordingly, the department may withhold the information you have marked under section 552.108(a)(2).

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). 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. The requestor has a right of access to his own private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, upon review, we find none of the remaining information is confidential under common-law privacy. Therefore, the department may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. 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.* The scope of information protected is narrower than that under the common-law doctrine of privacy. The information must concern the “most intimate aspects of human affairs.” *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). As noted above, the requestor has a right of access to his own private information pursuant to section 552.023 of the Government Code. In addition, after review of the remaining information, we find it does not contain information that is confidential under constitutional privacy. Therefore, the sheriff’s office may not withhold it under section 552.101 on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We agree the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130.

You assert some of the remaining information is excepted under section 552.147 of the Government Code, which provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). However, the remaining information does not contain any social security numbers. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.147.

To conclude, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and the information you have marked under section 552.130 of the Government Code. The sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff's office must release the remaining information.<sup>1</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.

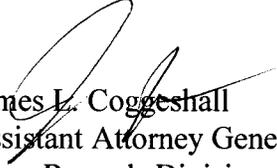
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</sup>Because the requestor has a special right of access to the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

Ref: ID# 454147

Enc. Submitted documents

c: Requestor  
(w/o enclosures)