



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2012

Deputy Danie Huffman
Public Information Officer
Parker County Office of the Sheriff
129 Hogle Street
Weatherford, Texas 76086

OR2012-09667

Dear Deputy Huffman:

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# 457227.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to case number 2006-01229. You state the sheriff's office has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the present request for information was received.² Therefore, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any

¹Although you do not cite section 552.101 of the Government Code, based on the substance of your arguments, we understand you to raise section 552.101 in conjunction with sections 58.007 and 261.201 of the Family Code and common-law privacy. See Gov't Code § 552.101 (excepting from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision"). Additionally, although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. See *id.* § 552.023.

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information that is not responsive to the request, and the sheriff's office need not release such information in response to this request.

Section 552.101 of the Government Code exempts 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 protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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.

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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You contend the submitted information is subject to section 58.007(c). Upon review, we find you have not demonstrated how the responsive information, which involves an adult suspect, involves juvenile conduct for purposes of section 58.007. Accordingly, the sheriff's office may not withhold the responsive information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code.³ Section 261.201 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

³Although we understand you to also raise former section 34.08 of the Family Code, which is the predecessor to section 261.201 of the Family Code, we note former section 34.08 has been repealed and is no longer in effect. *See Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.*

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas 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.

Id. § 261.201(a), (k), (l)(2)-(3). The submitted information pertains to an investigation of alleged or suspected child abuse; therefore, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011

and 22.021 as “a person younger than 17 years of age”), .021(b)(1). In this instance, however, the submitted information reflects that the requestor is a parent of the child victim listed in the submitted information and is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). Thus, the sheriff’s office may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the sheriff’s office must withhold the reporting party’s identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Additionally, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your remaining arguments for the remaining responsive information.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type 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 Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, you seek to withhold the responsive information in its entirety under section 552.101 in conjunction with common-law privacy. However, as noted above, the requestor is a parent of the minor child whose privacy interests are at issue. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to his child that would otherwise be confidential under common-law privacy. Accordingly, the sheriff’s office may not withhold the entirety of the

remaining responsive information from this requestor under section 552.101 on the basis of common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *Id.*; *see id.* § 552.301(e)(1)(A). You inform us the responsive information relates to a case “that has not been prosecuted, resulted in adjudication and or arrest[.]” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). Thus, having considered your representations, we find you have not demonstrated the responsive information falls within the scope of section 552.108(a)(2). We therefore conclude the sheriff’s office may not withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.

We note that portions of the remaining responsive information are subject to common-law privacy and do not pertain to the requestor or his child. This office has found that 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 the information we have marked in the responsive documents and indicated in one of the video recordings is highly intimate or embarrassing and not of legitimate public concern, and does not pertain to the requestor or his child. Therefore, the sheriff’s office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note portions of the remaining responsive information are subject to section 552.130 of the Government Code.⁴ Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). We find the sheriff’s office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff’s office must withhold the reporting party’s identifying information we have marked in the responsive documents under section 552.101 of the Government Code

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

in conjunction with section 261.201(1)(3) of the Family Code. The sheriff's office must withhold the information we have marked in the responsive documents and indicated in one of the video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining responsive information.⁵

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 457227

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the remaining responsive information contains a social security number. 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).