



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2013

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

OR2013-22025

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# 508782.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for any and all documents regarding dog bites or dangerous dog investigations involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note case number 12-14293 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-19575 (2013). In that ruling, we determined the sheriff's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Thus, we conclude the sheriff's office must continue to rely on Open Records Letter No. 2013-19575 as a previous determination and withhold case number 12-14293 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 58.007(c) of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) 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.

*Id.* § 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 the conduct occurred. *See id.* § 51.02(2). Upon review, we find none of the submitted information constitutes confidential law enforcement records under section 58.007(c), and none of it may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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. *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. 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. ORD 455 at 4. 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; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find the sheriff's office has failed to demonstrate any of the information at issue is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy. Furthermore, we find the sheriff's office has failed to demonstrate any of the information at issue falls within the constitutional zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the sheriff's office must rely on Open Records Letter No. 2013-19575 as a previous determination and withhold case number 12-14293 in accordance with that ruling. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/tch

Ref: ID# 508782

Enc. Submitted documents

c: Requestor  
(w/o enclosures)