



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2014

Mr. Daniel Plake
Assistant County Attorney
Open Records Division
Montgomery County
501 North Thompson, Suite 102
Conroe, Texas 77301

OR2014-04095

Dear Mr. Plake:

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# 516523 (ORR# 2013-7269).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all dispatch transcripts to a specified address. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, 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

¹Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we agree the submitted information pertains to investigations of alleged or suspected child abuse; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). In this instance, with regard to the information we have marked, the requestor is a parent of the child victim and is accused of committing the suspected abuse against the child. As such, this information may not be released to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). We therefore conclude the information we have marked is confidential under section 261.201(a) and must be withheld

under section 552.101 of the Government Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute). With regard to the remaining information, however, the requestor is a parent of the child victim and is not accused of committing the alleged abuse. Accordingly, the remaining information may not be withheld from the requestor under section 261.201(a). See Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether the remaining information is excepted from disclosure.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *Id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 provides in relevant 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.

...

(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.

²Because our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

...

(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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), a "child" is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the remaining information involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. Thus, this report is subject to section 58.007(c). In this instance, however, the requestor is the parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). 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). Thus, we will consider your remaining argument under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which 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. ORD 393 at 2; *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); ORD 440 (detailed descriptions of serious sexual offenses must be

withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld on the basis of common-law privacy. This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect and juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 58.007(c), 261.201.

In this instance, you seek to withhold the remaining 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 juveniles with a privacy interest. Accordingly, the requestor has a right of access to his children's information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Furthermore, we find you have not demonstrated how any of the remaining information that pertains to individuals other than the requestor or his children is highly intimate or embarrassing information that is of no legitimate public concern. Accordingly, the sheriff's office may not withhold any of the remaining information from this requestor under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.³ Gov't Code § 552.130. Upon review, we find the sheriff's office must withhold the driver's license information we have marked under section 552.130 of the Government Code.⁴

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). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c) of the Government Code. Upon review, we find the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner has consented to its release.

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

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner has consented to its release. The sheriff's office must release the remaining 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 516523

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a special right of access to the information being released pursuant to section 58.007(e) and section 261.201(k) of the Family Code. Accordingly, if the sheriff's office receives another request for this information from a different requestor, then the sheriff's office should again seek a decision from this office. We further note the information being released includes the 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 an attorney general decision under the Act. See Gov't Code § 552.147(b).