



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2014-09562

Dear Ms. Winn:

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# 525026.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all information related to 9-1-1 calls and incident reports pertaining to a specified area during a specified time period. You state some information has been released to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the sheriff's office. This ruling does not address the public availability of the information that is not responsive to the request, and the sheriff's office is not required to release this information in response to this request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we understand the sheriff's office will redact the cellular telephone numbers of private citizens you have indicated on the submitted video recordings. However, you do not assert, nor does our review of our records indicate, the sheriff's office has been authorized to withhold the cellular telephone numbers at issue without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As such, we will address the applicability of the submitted arguments to the cellular telephone numbers you have indicated.

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. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides 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 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.

Fam. Code § 261.201(a). You state portions of the information on the submitted video recordings were used or developed in an investigation of alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree the information we have indicated is subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family 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). As you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff's office must withhold the information we have indicated on the submitted video recordings 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) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. We understand the sheriff's office is part of an emergency communication district

that was established under section 772.218 of the Health and Safety Code. Section 772.218 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Upon review, we are unable to determine whether the addresses and telephone numbers in the submitted information were furnished by a 9-1-1 service provider or by the caller. Thus, we must rule conditionally. Therefore, to the extent the information at issue consists of the addresses and telephone numbers of 9-1-1 callers supplied by a 9-1-1 service supplier, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. If the addresses and telephone numbers were not supplied by a 9-1-1 service supplier, then the sheriff's office may not withhold the information under section 552.101 on the basis of section 772.218 of the Health & Safety Code.

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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, that records relating to routine traffic violations are not considered criminal history information. *See* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). We further note the common-law right to privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find most of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, a portion of the information at issue, which we have marked for

release, does not consist of a compilation of a living individual's criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, except for the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the sheriff's office must withhold the motor vehicle record information you have marked and the motor vehicle record information we have indicated on the submitted video recordings under section 552.130 of the Government Code.

Section 552.137 of the Government Code exempts 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 addresses you have marked, and the e-mail addresses we have indicated on the submitted video recordings, are not of the types specifically excluded by section 552.137(c). Accordingly, the sheriff's office must withhold the e-mail addresses you have marked and the e-mail addresses we have indicated under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the sheriff's office must withhold the information we have indicated on the submitted video recordings under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the information at issue consists of the addresses and telephone numbers of 9-1-1 callers supplied by a 9-1-1 service supplier, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. Except for the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you have marked and the motor vehicle record information we have indicated on the submitted video recordings under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses you have marked and the e-mail addresses we have indicated on the submitted video recordings under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The sheriff's office must release the remaining responsive information.²

²We note the information being released contains the social security number of a living individual. 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. *See* Gov't Code § 552.147(b).

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/eb

Ref: ID# 525026

Enc. Submitted documents

c: Requestor
(w/o enclosures)