



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 2, 2016

Ms. Jamie Bay
Warrants Clerk
Limestone County Sheriff's Office
912 North Tyus Street
Groesbeck, Texas 76642

OR2016-17350

Dear Ms. Bay:

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# 621264.

The Limestone County Sheriff's Office (the "sheriff's office") received a request for all calls and cases 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.

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." Gov't Code § 552.101. This section 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 satisfied. *Id.* at 681-82. This office has found 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. United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis.

The present request seeks all calls and cases pertaining to a named individual. This request requires the sheriff's office to compile the named individual's criminal history and implicates his right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007(c) reads as follows:

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. Upon review, we find report numbers C15-06-0426, C15-07-1970, C15-11-1110, and C15-11-1225 involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, report numbers C15-06-0426, C15-07-1970, C15-11-1110, and C15-11-1225 are generally confidential under section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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.

Id. § 261.201(a). Upon review, we find report number C04-05-0626 relates to an investigation of alleged or suspected child abuse conducted by the sheriff’s office. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section). Accordingly, we find report number C04-05-0626 is within the scope of section 261.201(a). Thus, this information is generally confidential under section 261.201(a) of the Family Code.

However, the submitted documentation reveals the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See Hum. Res. Code* § 42.042(a), (e), (f)-(g) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447 of title 40 of the Texas Administrative Code. 40 T.A.C. §§ 749.2445(c)(1), 2471(1); *cf.* *Hum. Res. Code* § 42.0561 (providing in part that “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by [DFPS].”). Section 749.2447(7)

provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

(A) *Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

40 T.A.C. § 749.2447(7)(A), (C) (emphasis added); *see id.* § 749.2445(a); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2445.

While the requestor may generally have a right of access to some of the requested information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code, we note report number C04-05-0626 falls outside of the two year period to which section 749.2447(7) of title 40 of the Texas Administrative Code grants access. *See id.* § 749.2447(7)(A), (C). Therefore, the requestor does not have a right of access to report number C04-05-0626 pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Additionally, to the extent it exists, the requestor would not have a right of access to any information listing the named individual as a suspect, arrestee, or criminal defendant that falls outside of this two year time period. *See id.* Thus, the sheriff’s office must withhold report C04-05-0626 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Furthermore, to the extent the sheriff’s office

maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant that fall outside the two year time period specified by section 749.2447(7), the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, the requestor is seeking police reports that may pertain to a prospective foster parent's address. Although the requestor is seeking the submitted information as the representative of a child-placing agency, because we cannot determine whether the requestor is seeking access pursuant to section 749.2447(7) of the Texas Administrative Code, we must rule conditionally. Therefore, if the submitted information does not pertain to a current or prospective foster parent's address, we conclude the requestor does not have a right of access to the information at issue pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. In that instance, the sheriff's office must withhold report numbers C15-06-0426, C15-07-1970, C15-11-1110, and C15-11-1225 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Furthermore, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant that fall within the two year time period specified by section 749.2447(7), the sheriff's office must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, if the information pertains to a current or prospective foster parent's address, we conclude the requestor generally has a right of access to the information at issue pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 58.007(c) of the Family Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). While section 58.007(c) generally makes juvenile law enforcement records confidential with respect to the general public, section 749.2447(7) requires release of information for a specified address and time period to a specified type of requestor in a certain circumstance — a child-placing agency verifying a foster home at that address. *See* Fam. Code § 58.007(c); 40 T.A.C. § 749.2447(7). Thus, the statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Consequently, the sheriff's office may not withhold the information at issue under section 552.101 in conjunction with section 58.007(c) of the Family Code. We also note a specific statutory right of access overcomes general exceptions to disclosure in the Act and the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory

provision controls and preempts common law only when statute directly conflicts with common-law principle). Accordingly, to the extent the sheriff's office maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant that fall within the two year time period specified by section 749.2447(7), the sheriff's office may not withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

To the extent the information pertains to a current or prospective foster parent's address, we note portions of the information to which the requestor has a right of access are subject to section 552.130 of the Government Code.¹ 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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Upon review, we find some of the submitted information consists of motor vehicle record information for purposes of section 552.130. Accordingly, the motor vehicle record information we have marked is generally confidential under section 552.130 of the Government Code.

However, as previously discussed, the requestor may have a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 552.130 of the Government Code. Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the right of access provided by section 749.2447(7). Accordingly, we conclude, notwithstanding the possible statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code, the sheriff's office must withhold the marked motor vehicle record information under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold report C04-05-0626 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, as well as, to the extent it exists, any law enforcement record listing the named individual as a suspect, arrestee, or criminal defendant that fall outside the two year time period specified by section 749.2447(7), under section 552.101 of the Government Code in

¹The 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).

conjunction with common-law privacy. If the remaining information does not pertain to a current or prospective foster parent's address, the sheriff's office must withhold report numbers C15-06-0426, C15-07-1970, C15-11-1110, and C15-11-1225 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, along with, to the extent it exists, any law enforcement record listing the named individual as a suspect, arrestee, or criminal defendant that fall within the two year time period specified by section 749.2447(7), under section 552.101 of the Government Code in conjunction with common-law privacy. If the remaining information does pertain to a current or prospective foster parent's address, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and must release the remaining information.

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/bhf

Ref: ID# 621264

Enc. Submitted documents

c: Requestor
(w/o enclosures)