



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2016

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson , Suite 300
Conroe, Texas 77301

OR2016-23733

Dear Mr. Anderson:

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# 631473 (ORR File 16PIA455).

The Montgomery County Sheriff's Office (the "sheriff's office") received a received a request for information pertaining to the requestor during a specified time period. 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 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 261.201 of the Family Code, which 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 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.

Fam. Code § 261.201(a). Upon review, we find police report numbers 98A002898 and 98A003907 were used or developed in investigations of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). 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 regulation exists. Given that assumption, and based on our review, we determine report numbers 98A002898 and 98A003907 are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* The sheriff’s office must withhold report numbers 98A002898 and 98A003907 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we agree the remaining information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual’s privacy. In this instance, withholding only the individual’s identity or certain details of the report from this requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff’s office must withhold report number 99A001332 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff’s office must withhold report numbers 98A002898 and 98A003907 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

the Family Code. The sheriff's office must withhold report number 99A001332 under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in black ink, appearing to read "Kaelan A. Henze". The signature is written in a cursive, flowing style.

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 631473

Enc. Submitted documents

c: Requestor
(w/o enclosures)