



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 1, 2017

Ms. Lori J. Kaspar  
Hood County Attorney  
Hood County  
1200 West Pearl Street  
Granbury, Texas 76048

OR2017-02275

Dear Ms. Kaspar:

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# 643796.

The Hood County Sheriff's Office (the "sheriff's office") received a request for a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 exception encompasses information other statutes make confidential. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. Section 58.007 of the Family Code provides, in 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.

...

(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 [of the Government Code], or other law.

Fam. Code § 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 submitted information involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Thus, the submitted information is subject to section 58.007(c). In this instance, the requestor may be a guardian of the juvenile offender and, therefore, may have a right of access to the submitted information pursuant to section 58.007(e). *See id.* § 58.007(e). Thus, we must rule conditionally. If the requestor is not a guardian of the juvenile offender, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in

conjunction with section 58.007(c) of the Family Code.<sup>1</sup> If, however, the requestor is a guardian of the juvenile offender, then the sheriff's office may not use section 58.007(c) to withhold this information from this requestor. *See id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 58.005 of the Family Code, which provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals.]” *Id.* § 58.005(a). The sheriff's office does not inform us, and the submitted information does not itself reflect, that any of this information was “obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court.” *Id.* We therefore conclude none of the submitted information is confidential pursuant to section 58.005 of the Family Code and the sheriff's office may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states the submitted information pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the basic “front-page” offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information). Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

The sheriff's office claims the basic information is subject to the doctrine of common-law privacy, which is encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

As noted above, the requestor may be a guardian of the individual whose privacy rights would be implicated in the basic information. Section 552.023(a) states "a person . . . has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is a guardian of the juvenile offender, the requestor has a right of access to the private information of this minor child pursuant to section 552.023, and the sheriff's office may not withhold information pertaining to this child from him under section 552.101 on the basis of common-law privacy. Upon review, we find the sheriff's office failed to demonstrate any of the basic information pertains to an individual other than his minor child and is confidential under common-law privacy. Therefore, the sheriff's office may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not a guardian of the juvenile offender, the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a guardian of the juvenile offender, then with the exception of the basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

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

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 643796

Enc. Submitted documents

c: Requestor  
(w/o enclosures)