



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Mr. Vance Hinds
Assistant County & District Attorney
Ellis County & District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2017-09421

Dear Mr. Hinds:

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# 656171.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to three specified case numbers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ 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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

¹Although you also raise section 552.101 in conjunction with constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. See Gov't Code §§ 552.301, .302.

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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). The submitted information pertains to investigations by the sheriff's office of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See 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), 261.001(1), (4) (defining "abuse" and "neglect" 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 find the sheriff's office must withhold case numbers 16-14130 and 16-14148 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

We note, however, the requestor may be the legal guardian of the child victim in case number 16-14642. We also note the requestor is not alleged to have committed the alleged or suspected child abuse or neglect. *See id.* § 261.201(k). Thus, we must rule conditionally. If the requestor is not the legal guardian of the child victim at issue, the sheriff's office must withhold case number 16-14642 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ If the requestor is the legal guardian of the child victim at issue, the sheriff's office may not withhold case number 16-14642 from the requestor under section 261.201(a). *See id.* In that instance, the sheriff's office must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(1)(2). *Id.* § 261.201(1)(2). Thus, we will consider your remaining arguments for the information at issue.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code, which provides, in pertinent part, as follows:

(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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Id. § 58.007(c). 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 at the time of the conduct at issue. *See id.* § 51.02(2). You contend case number 16-14642 is subject to section 58.007. However, we note this report reflects the suspect was under the age of ten at the time of the conduct at issue. Because the legislature has chosen to protect the law enforcement records of only a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the report for case number 16-14642 is not confidential under section 58.007(c) of the Family Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Therefore, the sheriff's office may not withhold case number 16-14642 under section 552.101 of the Government Code in conjunction of section 58.007(c) of the Family Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You state the information you have marked pertains to a concluded criminal case that did not a result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to this information. Therefore, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). To the extent the requestor has a right of access to case number 16-14642 under section 261.201(k) of the Family Code, you assert the two dates of birth you have marked are confidential under section 552.101 on the basis of common-law privacy. However, in this instance, we note one of the dates of birth at issue pertains to the minor child to whom the requestor is the legal guardian. Thus, in this instance, the requestor has a right of access to this information under section 552.023 of the Government Code, and the sheriff's office may not withhold it from him on the basis of common-law privacy. *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). Further, the requestor may be acting as the authorized representative of the individual to whom the remaining date of birth pertains. Therefore, to the extent the requestor is acting as the authorized representative of the individual to whom the remaining date of birth pertains, the sheriff's office may not withhold this date of birth under section 552.101 of the Government Code in

conjunction with common-law privacy. Conversely, to the extent the requestor is not acting as the authorized representative of the individual to which the remaining date of birth pertains, the sheriff's office must withhold this date of birth, which you have marked, under section 552.101 of the Government Code 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 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.* We note section 552.130 protects privacy interests. As noted above, the requestor may be acting as the authorized representative of the individual whose motor vehicle record information is at issue, and may have a right of access to information pertaining solely to this individual that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as authorized representative of the individual at issue, then the sheriff's office may not withhold the motor vehicle record information you have marked from this requestor under section 552.130 of the Government Code. However, if the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold case numbers 16-14130 and 16-14148 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not the legal guardian of the child victim at issue, the sheriff's office must withhold case number 16-14642 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is the legal guardian of the child victim at issue in case number 16-14642 and thus, has a right of access to this information pursuant to section 261.201(k) of the Family Code, then (1) the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code; (2) to the extent the requestor is not acting as the authorized representative of the individual at issue, the sheriff's office must withhold the date of birth pertaining to this individual under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the motor vehicle record information you have marked under section 552.130 of the Government Code; and (3) the sheriff's office 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,

A handwritten signature in cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 656171

Enc. Submitted documents

c: Requestor
(w/o enclosures)