



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2017

Ms. Mary Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2017-09718

Dear Ms. Miller:

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# 656466.

The Denton County Sheriff's Office (the "sheriff's office") received multiple requests from the same requestor for information pertaining to a specified address, named individual, and the requestor's two minor children during specified time periods, including specified incidents. The sheriff's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted is not responsive to the instant requests because it does not pertain to the specified address, the named individual, or the requestor's minor children. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office is not required to release such information in response to these request.

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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 made confidential by other statutes, including 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 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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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.

(1) 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the sheriff's office under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). As you note, the requestor is a parent of the alleged child victims at issue and is not accused of committing the alleged or suspected child abuse or neglect. Therefore, the sheriff's office may not withhold the information at issue from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your arguments under sections 552.101, 552.130, and 552.152 of the Government Code for the information at issue.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code. Section 58.007 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, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2); *see id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We find the some submitted information involves a juvenile offender engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997, so as to fall within the scope of section 58.007(c). In this instance, however, the requestor is the parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Thus, we will consider your remaining arguments with respect to the information at issue. However, we find the remaining information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that you have failed to demonstrate the applicability of section 58.007 to the remaining information, and it may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find some of the submitted audio and video recordings contain information subject to section 552.130. You assert the sheriff's office does not have the technological ability to redact confidential information from the submitted audio recordings at issue. However, because the sheriff's office had the ability to copy the audio recordings for our review, we believe the sheriff's office has the capability to produce a copy of only the non-confidential portions of the audio recordings at issue. Additionally, you state the sheriff's office does not have the technological capability to redact the motor vehicle record information from the video recordings. Accordingly, the sheriff's office must withhold audible motor vehicle record information in the submitted audio recordings at issue, the indicated video recordings in their entireties, the information you marked, and the additional information we marked under section 552.130 of the Government Code.¹ See Open Records Decision No. 364 (1983). However, upon review, we find you have failed to demonstrate any of the remaining information is subject to section 552.130. Thus, the sheriff's office may not withhold any of the remaining information under section 552.130 of the Government Code.

As noted above, section 552.101 of the Government Code also encompasses subsection 261.201(1)(3) of the Family Code. Subsection 261.201(1)(3) provides, 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 section 261.201(k) of the Family Code, the identity of the person who made the report of alleged child abuse or neglect must be redacted. Fam. Code § 261.201(1)(3). Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(3) of the Family 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, the requestor is a parent of the minor children whose privacy interests are at issue. See Gov't Code § 552.023(a) ("person's authorized representative has a special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated

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

when individuals requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her minor children that would otherwise be confidential under common-law privacy.

Upon review, we find the remaining information includes information subject to section 552.101 of the Government Code in conjunction with common-law privacy to which the requestor does not have a right of access. Although you state the sheriff's office does not have the technological ability to redact confidential information from the submitted audio recordings, because the sheriff's office had the ability to copy the audio recordings for our review, we believe the sheriff's office has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the sheriff's office must withhold the indicated information within the audio recordings at issue and the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You generally raise section 552.152 of the Government Code. Upon review, we find you have failed to demonstrate the release of the remaining information would subject an employee or officer to a substantial risk of physical harm. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold audible motor vehicle record information in the submitted audio recordings, the indicated video recordings in their entirety, the information you marked, and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(3) of the Family Code. The sheriff's office must withhold the indicated information within the audio recordings at issue and the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 656466

Enc. Submitted documents

c: Requestor
(w/o enclosures)