



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2017

Mr. Mark C. Kratovil
Assistant District Attorney
Tarrant County
401 West Belknap, 9TH Floor
Fort Worth, Texas 76196

OR2017-15685

Dear Mr. Kratovil:

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# 665975.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for information pertaining to cases involving the requestor's child, including specified incidents. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have submitted a court order of restricted access pertaining to some of the requested information. The order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety shall certify that juvenile law enforcement records are subject to automatic restriction of access under certain circumstances. Fam. Code § 58.203. Section 58.204(b) provides:

(b) On certification of records in a case under Section 58.203, the [Texas Department of Public Safety] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(2) for research purposes, by the Texas Juvenile Justice Department;

(3) by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;

(4) with the permission of the juvenile court at the request of the person who is the subject of the records;

(5) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit; or

(6) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

Id. § 58.204(b). Furthermore, section 58.207 of the Family Code provides in relevant part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

...

(b) [O]n receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). In this instance, the requestor is not one of the entities listed in section 58.204(b), to which access is allowed. Therefore, in accordance with the submitted order of restricted access and section 58.207(b) of the Family Code, we find the sheriff's office must respond to the request by stating the records at issue do not exist.

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 that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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.

See id. § 51.02(2) (defining “child” 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. We find report numbers 2014-224739 and 2015-069405 involve juvenile offenders, so as to fall within the scope of section 58.007(c). In this instance, however, the requestor is the parent of one of the juvenile offenders. Section 58.007(e) states law enforcement records and files concerning a child may be inspected or copied by the child’s parent. *See id.* § 58.007(e). For purposes of section 58.007(e), the term “parent” means “the mother or the father of a child, but does not include a parent whose parental rights have been terminated.” *See id.* § 51.02(9). Although, we understand the sheriff’s office to argue the requestor has had his parental rights terminated and assert it must withhold the information at issue from this requestor under section 58.007 of the Family Code, we are unable to determine whether the requestor’s parental rights have been terminated for purposes of section 51.02(9). Whether the parental rights of the requestor have been terminated is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, if the sheriff’s office determines the requestor’s parental rights have been terminated for purposes of section 51.02(9), the sheriff’s office must withhold report numbers 2014-224739 and 2015-069405 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹ However, if the sheriff’s office determines the requestor’s parental rights have not been terminated for purposes of section 51.02(9), then, pursuant to section 58.007(e), the sheriff’s office may not withhold report numbers 2014-224739 and 2015-069405 in their entireties from this requestor. *See* Fam. Code § 58.007(e). However, we note section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address the sheriff’s office’s remaining arguments against disclosure of report numbers 2014-224739 and 2015-069405, and the information not subject to section 58.007.

Further, if the sheriff’s office determines the requestor’s parental rights have not been terminated and the requestor has a right access to report number 2015-069405 under section 58.007(e), the information at issue may be confidential under section 261.201 of the Family Code. Section 552.101 of the Government Code also encompasses section 261.201, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

¹As our ruling is dispositive, we need not address the sheriff’s office’s remaining arguments against disclosure of this information.

(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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

...

(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.

Id. § 261.201(a), (h), (k)), (l)(2). We note report number 2015-069405 was used in an investigation of alleged or suspected child abuse or neglect by the sheriff's office. *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). In this instance, however, the information at issue is related to an investigation of alleged or suspected child abuse or neglect that occurred in a facility that may be regulated under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of child abuse or neglect that occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42. *Id.* § 261.201(h). Thus, we must rule conditionally. If the child care facility at issue is regulated under chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to report number 2015-069405, and the sheriff's office may not withhold report number 2015-069405

under section 552.101 on that basis. If the child care facility is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the remaining information in report number 2015-069405 is subject to section 261.201. In that case, we note the requestor is a parent of one of the child victims named in the report, and is not alleged to have committed the suspected abuse or neglect, and the sheriff's office may not withhold report number 2015-069405 from the requestor under section 552.101 on that basis. *Id.* § 261.201(k). However, we note section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2).

As noted above, section 552.101 of the Government Code also encompasses section 58.007(j)(1) of the Family Code. Section 58.007(j)(1) provides before a child's parent or guardian may inspect or copy a record or file concerning the child under section 58.007(e) of the Family Code, any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *See id.* § 58.007(j)(1). Accordingly, the sheriff's office must withhold the information we marked in report numbers 2014-224739 and 2015-069405 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.² However, we find none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.101 of the Government Code also 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The 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.). If the sheriff's office determines the requestor has a right of access to report numbers 2014-224739 and 2015-069405 pursuant to section 58.007(e) of the Family Code, we note the requestor also has a right of access to the date of birth and other private information of his minor child pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative 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”); Open Records Decision No. 481 at 4 (1987)

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

(privacy theories not implicated when individuals request information concerning themselves). Additionally, we note the remaining information in report numbers 2014-224739 and 2015-069405 includes the date of birth of an individual who has been de-identified and whose privacy interest is, thus, protected. Upon review, however, we find the sheriff's office must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may not withhold any of the remaining information under section 552.101 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. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, in accordance with the submitted order of restricted access and section 58.207(b) of the Family Code, the sheriff's office must respond to the request by stating some of the records at issue do not exist. If the sheriff's office determines the requestor's parental rights have been terminated for purposes of section 51.02(9) of the Family Code, the sheriff's office must withhold report numbers 2014-224739 and 2015-069405 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the sheriff's office determines the requestor's parental rights have not been terminated for purposes of section 51.02(9), then the sheriff's office may not withhold report numbers 2014-224739 and 2015-069405 from this requestor under section 552.101 on that basis, but must withhold the information we marked in report numbers 2014-224739 and 2015-069405 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The sheriff's office must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government

³The 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).

Code. The sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The sheriff's office must release the remaining information.⁴

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
Attorney
Open Records Division

EK/eb

Ref: ID# 665975

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released. Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.