



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2017

Mr. Andrew Wipke
Assistant District Attorney
Lubbock County
904 Broadway, Second Floor
Lubbock, Texas 79401

OR2017-19775

Dear Mr. Wipke:

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# 673284 (ORR.384).

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for a specified police report. You state you have released some information. You claim portions of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. Section 552.101 encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) The 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

(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.

Fam. Code § 261.201(a). You state portions of the submitted information were used or developed in an investigation of alleged or suspected child abuse or neglect. *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). Upon review, we find the information we marked and indicated is within the scope of section 261.201 of the Family Code. You have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the sheriff’s office must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. However, we find the sheriff’s office has failed to demonstrate the remaining information is a report of child abuse or neglect, or was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. Accordingly, the sheriff’s office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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)*. This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394 (1983)*; *cf.* Fam. Code § 261.201. 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff’s office must withhold the dates of birth you marked and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no legitimate public concern.

Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find some of the remaining information consists of personal information of an individual who is a peace officer. Accordingly, the sheriff's office must withhold the information we indicated under section 552.1175 of the Government Code if the peace officer elected to restrict access to his information in accordance with section 552.1175(b). If the individual did not elect to restrict access to his information in accordance with section 552.1175(b), the sheriff's office may not withhold the information we indicated under section 552.1175.

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 id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we agree the sheriff's office may withhold the social security numbers you marked under section 552.147(a) of the Government Code.

In summary, the sheriff's office must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the dates of birth you marked and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we indicated under section 552.1175 of the Government Code, if the individual whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The sheriff's office may withhold the social security numbers you marked under section

¹The 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).

552.147(a) of the Government Code. 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 black ink, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Attorney
Open Records Division

DMC/sdk

Ref: ID# 673284

Enc. Submitted documents

c: Requestor
(w/o enclosures)