



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Mr. Daniel W. Ray
Counsel for the County of Hunt
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P.O. Box 1353
Greenville, Texas 75403-1353

OR2019-03199

Dear Mr. Ray:

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# 748959.

The Hunt County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to the requestor's children. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or any other law.

Fam. Code § 58.008(b), (d), (e)(2); *see also id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) applies to records of juvenile conduct that occurred before, on, or after September 1, 2017.¹ *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Upon review, we find case number 1403708 involves

¹Although you raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187. Thus we understand you to raise section 58.008(b) of the Family Code.

a juvenile offender, so as to fall within the scope of section 58.008(b). Further, we find case numbers 1400715, 1400647, 1400719, 1400716, and 1400718 involve delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.008(b); however, we are unable to determine the age of the offenders in these reports. Accordingly, we must rule conditionally. If the offenders at issue in case numbers 1400715, 1400647, 1400719, 1400716, and 1400718 were not ten years of age or older and under seventeen years of age at the time of the conduct, the information is not subject to section 58.008(b) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis. If the offenders at issue in case numbers 1400715, 1400647, 1400719, 1400716, 1400718 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue falls within the scope of 58.008(b) of the Family Code. We note the exceptions in section 58.008 do not appear to apply to case numbers 1400715, 1400647, 1400719, 1400716, 1400718. Therefore, to the extent the offenders in case numbers 1400715, 1400647, 1400719, 1400716, 1400718 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information at issue must be withheld under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. We note, however, the requestor is the parent of the juvenile offender in case number 1403708. Thus, the sheriff's office may not withhold case number 1403708 from this requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. *See id.* § 58.008(d). Further, upon review, we find the remaining information does not involve a juvenile suspect, offender, or defendant engaging in delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.008(b). Therefore, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses 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, 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law.

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

Id. § 261.201(a), (k), (l)(1)-(3). We note some of the remaining information was used or developed in investigations of alleged or suspected child abuse, so as to be subject to section 261.201(a) 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). In this instance, however, the requestor is the parent of the victims of the alleged abuse or neglect, and the requestor is not accused of committing the alleged abuse. Therefore, pursuant to section 261.201(k), the sheriff’s office may not withhold the information at issue from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k).

Section 261.201(l)(1) provides, however, that before a record concerning a child can be copied or inspected by the child’s parent, managing conservator, or other legal representative, any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s, managing conservator’s, or other legal representative’s child must be

redacted. *See id.* § 261.201(1)(1). We have marked information that identifies witnesses of the alleged abuse who are not represented by the requestor. The marked information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code to the extent the witness was under 18 years of age at the time of the incident to which the information pertains. Additionally, section 261.201(1)(3) also provides that the identity of the reporting party must be withheld. *See id.* § 261.201(1)(3). We have marked information that identifies the reporting parties. The sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Further, section 261.201(1)(2) of the Family Code provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(1)(2). Therefore, we will consider whether the information at issue is otherwise excepted from disclosure.

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. *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, we note the remaining information includes the requestor and her minor children's dates of birth. The requestor has a right of access to this information. *See Gov't Code* § 552.023(a) ("a person or 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 a 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 when individual requests information concerning herself). Additionally, we note some of the dates of birth relate to individuals who have been de-identified and whose privacy interests are thus protected. Accordingly, with the exception of the requestor's and her minor children's dates of birth, the sheriff's office must withhold the remaining identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the offenders at issue in case numbers 1400715, 1400647, 1400719, 1400716, 1400718 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the sheriff's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the information we marked pertains to individuals who were under 18 years of age at the time of the incident to which the information pertains, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of the requestor and her minor

children's dates of birth, the sheriff's office must withhold the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 748959

Enc. Submitted documents

c: Requestor
(w/o enclosures)