



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2019

Mr. Mark Kratovil
Assistant District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2019-14376

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# 768257.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for all dispatch notes and police reports pertaining to three specified addresses and two named individuals, including the requestor, over a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, and 552.137 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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

(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.

Fam. Code § 261.201(a), (k). You inform us the information in Exhibit C was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor is a parent of at least one of the child victims listed in the information at issue. However, we note the requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, the sheriff's office must withhold Exhibit C 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).*

Section 552.101 of the Government Code 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). 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.). We note, and you acknowledge, the requestor has a right of access to his own date of birth. *See* Gov't Code § 552.023(a) (“person or a person’s authorized representative has 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 when individual requests information concerning herself).

Upon review, we find some of the information in Exhibit D satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the requestor’s date of birth, the sheriff’s office must withhold all public citizens’ dates of birth and the additional information we marked in Exhibit D 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 intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You argue some of the information you have marked in Exhibit D may be withheld under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001). Open Records Decision No. 670 authorizes a governmental body to withhold a peace officer’s home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) of the Government Code without requesting a decision from this office. *See* ORD 670. However, we note section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity. *See* Gov’t Code § 552.117(a)(2). The information you have marked is located in a law enforcement record listing the peace officers as witnesses in an investigation. Thus, we find the information at issue is not protected by section 552.117(a)(2) of the Government Code. Therefore, the sheriff’s office may not rely on Open Records Decision No. 670 in withholding the information at issue and may not withhold this information under section 552.117(a)(2).

Nevertheless, the information you have marked may be subject to section 552.1175 of the Government Code. 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. *Id.* § 552.1175. Some of the remaining information pertains to individuals who may be subject to section 552.1175. Thus, the sheriff's office must withhold the information we have marked in Exhibit D under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a) and the individual elects to restrict access to this information in accordance with section 552.1175(b). However, if the individual is not subject to section 552.1175(a) or does not elect to restrict access to this information in accordance with section 552.1175(b), then the sheriff's office may not withhold this information under section 552.1175. Upon review, we find the remaining information you have marked consists of a business address and business phone numbers that are not subject to section 552.1175 of the Government Code, and may not be withheld on that basis.

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. We note section 552.130 protects personal privacy. Accordingly, we note and you acknowledge, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a). Accordingly, the sheriff's office must withhold the motor vehicle record information we marked in Exhibit D 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). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail address we marked in Exhibit D under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.¹

In summary, the sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the requestor's date of birth, the sheriff's office must withhold all public citizens' dates of birth and the additional information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we marked in Exhibit D under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a) and the individual elects to restrict access to this information in accordance with section 552.1175(b). The sheriff's office must withhold the motor vehicle record information we

¹We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

marked in Exhibit D under section 552.130 of the Government Code. The sheriff's office must withhold the personal e-mail address we marked in Exhibit D under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff's office must release the remaining information.²

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,



Lecelle Clarke
Attorney
Open Records Division

LC/jxd

Ref: ID# 768257

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.