



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Mr. Shane Linkous
General Counsel
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

OR2019-21653

Dear Mr. Linkous:

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# 776461 (ID No. 2019-213).

The State Office of Administrative Hearings ("SOAH") received a request for all exhibits pertaining to a specified case.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You state, and provide documentation showing, you notified an interested individual of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Additionally, you state you notified the Health and Human Services Commission and the Texas Education Agency of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why

¹We note SOAH sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

information should or should not be released). We have received comments from the Texas Department of Family and Protective Services. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information consists of court-filed documents. Section 552.022 of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although you seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the court-filed documents may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address your remaining arguments against disclosure of 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 protected by other statutes, such as 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.

Fam. Code § 261.201(a). You and the Department of Family and Protective Services (“DFPS”) assert some of the submitted information is confidential under section 261.201(a)(2) because it consists of information directly derived from DFPS records. You and DFPS state, and we agree, the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect by the DFPS, an agency authorized to conduct investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of

section 261.201 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). Thus, the information is subject to section 261.201 of the Family Code. We note in accordance with section 40.005 of the Human Resources Code, DFPS promulgated section 700.203 of title 40 of the Texas Administrative Code, which permits DFPS to disclose information made confidential under section 261.201(a) under certain circumstances. *See* Hum. Res. Code § 40.005; 40 T.A.C. § 700.203. Neither you nor DFPS informs us the requestor has a right of access under this rule to the information at issue. Therefore, we conclude SOAH must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate any of the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Therefore, SOAH may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find you have failed to demonstrate the information you marked consists of records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. Accordingly, SOAH may not withhold the

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

information at issue under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You assert the information you marked consists of the originating telephone numbers of 9-1-1 callers. You do not inform us, however, whether El Paso County (the “county”) is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the county is part of an emergency communication district established under one of these sections, then, to the extent the telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, SOAH must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. If the county is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone numbers were not supplied by a 9-1-1 service supplier, then SOAH may not withhold this information under section 552.101 of the Government Code on the basis of section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual’s protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines “covered entity” to include any person who

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). We understand you to claim the information you marked is subject to section 181.006 of the Health and Safety Code. However, you do not inform us SOAH is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the information you marked is subject to section 181.006 of the Health and Safety Code, and SOAH may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, SOAH must withhold the motor vehicle record information you marked, and the additional information we marked, from the remaining information under section 552.130 of the Government Code.

In summary, SOAH must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the county is part of an emergency communication district, then, to the extent the telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the SOAH must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. SOAH must withhold the motor vehicle record information you marked, and the additional information we marked, from the remaining information under section 552.130 of the Government Code. SOAH 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 "Ashley Crutchfield". The signature is written in a cursive style with a large, stylized initial 'A'.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 776461

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)