



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 7, 2019

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2019-21766

Dear Mr. Anderson:

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# 779683 (ORR 19PIA207).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a copy of all 9-1-1 call records and related reports and documents pertaining to three specified addresses.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information includes information obtained through grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury,

¹ The sheriff's office sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

and are also not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the sheriff's office holds the information at issue solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the sheriff's office is not required to release that information in response to the instant request. To the extent the sheriff's office holds the information at issue in its own capacity and not solely as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to disclosure.

Section 552.101 of the Government Code exempts 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, as follows:

(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 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:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Fam. Code § 58.008(b), (d)(2); *see id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *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 ten years old and less than seventeen 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 Exhibits F, H, and I involve a juvenile offender, so as to fall within the scope of section 58.008(b). Therefore, Exhibits F, H, and I are generally confidential under section 58.008(b).²

However, we note the requestor is a representative of the Office of Capital and Forensic Writs (the “OCFW”). Section 411.1272 of the Government Code provides:

The [OCWF] and a public defender’s office are entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that relates to a criminal case in which an attorney compensated by the [OCFW] or by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* 411.082(2). Accordingly, the requestor may have a right of access to CHRI in Exhibits F, H, and I pursuant to sections 411.087(a)(2) and 411.1272. *See id.* §§ 411.087(a)(2), .1272.

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

Accordingly, we must address the conflict between section 58.008(b) of the Family Code and sections 411.087 and 411.1272 of the Government Code.

Where information falls within both general and specific statutory provisions, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Although section 58.008(b) generally makes juvenile law enforcement records confidential, sections 411.087 and 411.1272 of the Government Code give the OCFW access to particular information in specific situations. *See Gov't Code* §§ 411.087, .1272. Thus, the statutory right of access granted to the OCFW by sections 411.087 and 411.1272 of the Government Code prevail over the more general confidentiality provision of section 58.008(b) of the Family Code.

Therefore, if the sheriff's office determines Exhibits F, H, and I relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits F, H, and I and must withhold the remaining information in Exhibits F, H, and I under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the sheriff's office determines Exhibits F, H, and I do not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must withhold Exhibits F, H, and I in their entireties under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

(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). The sheriff's office asserts Exhibits J and K were used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find Exhibits B, J, and K are within the scope of section 261.201 of the Family Code. The sheriff's office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the sheriff's office generally must withhold Exhibits B, J, and K under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).³

However, as noted above, the requestor is a representative of the OCFW and may have a right of access to CHRI in Exhibits B, J, and K pursuant to sections 411.087(a)(2) and 411.1272. *See* Gov't Code §§ 411.087(a)(2), .1272. Section 261.201(a) provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes "applicable state law" in this instance.

Accordingly, as noted above, the requestor is authorized to obtain the CHRI in Exhibits B, J, and K from the sheriff's office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed and if release of the information is consistent with the Family Code. *See* Gov't Code §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a). However, this office cannot determine whether the release of the information at issue is consistent with the Family Code and whether the information relates to a criminal case in which an attorney compensated by the OCFW is appointed. Therefore, if the sheriff's office determines release of the CHRI is not consistent with the Family Code or does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must withhold Exhibits B, J, and K in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the sheriff's office determines release of the CHRI is consistent with the Family Code and relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits B, J, and K but must withhold the remaining information in Exhibits B, J, and K under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibits C, D, E, and G pertain to closed cases that did not result in convictions or deferred adjudications. Based upon your representations and our review of the information, we agree section 552.108(a)(2) is applicable to the information at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Pub'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may generally withhold Exhibits C, D, E, and G under section 552.108(a)(2) of the Government Code.

However, as noted above, the requestor is a representative of the OCFW. Accordingly, the requestor is authorized to obtain CHRI pertaining to Exhibits C, D, E, and G from the sheriff's office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed. *See* Gov't Code §§ 411.087(a)(2), .1272. Although you raise section 552.108 of the Government Code for such information, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, if the sheriff's office determines Exhibits C, D, E, and G relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits C, D, E, and G. In that instance, with the exception of basic information, which must be released, the sheriff's office may withhold the remaining information in Exhibits C, D, E, and G under section 552.108(a)(2) of the Government Code. If the sheriff's office determines Exhibits C, D, E, and G do not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then, with the exception of basic information, which must be released, the sheriff's office may withhold Exhibits C, D, E, and G under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses the right of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident B.*, 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold Exhibits L and M in their entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information must be withheld in their entirety on the basis of common-law privacy. Upon our review, however, we note portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked in Exhibits L and M under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold the remaining information under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle record title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.⁴ See Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the motor vehicle record information we marked in the remaining information under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office holds the information obtained through the grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the sheriff's office is not required to release that information in response to the instant request. If the sheriff's office determines Exhibits F, H, and I relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits F, H, and I and must withhold the remaining information in Exhibits F, H, and I under section 552.101 of the Government Code in conjunction with section 58.008(b). However, if the sheriff's office determines Exhibits F, H, and I do not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must withhold Exhibits F, H, and I in their entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the sheriff's office determines release of CHRI is not consistent with the Family Code or does not relate

⁴The 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).

to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must withhold Exhibits B, J, and K in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the sheriff's office determines release of CHRI is consistent with the Family Code and relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits B, J, and K but must withhold the remaining information in Exhibits B, J, and K under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the sheriff's office determines Exhibits C, D, E, and G relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release CHRI from Exhibits C, D, E, and G, and with the exception of basic information, which must be released, the sheriff's office may withhold the remaining information in Exhibits C, D, E, and G under section 552.108(a)(2) of the Government Code. If the sheriff's office determines Exhibits C, D, E, and G do not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then with the exception of basic information, which must be released, the sheriff's office may withhold Exhibits C, D, E, and F under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked in Exhibits L and M 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 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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 779683

Enc. Submitted documents

c: Requestor
(w/o enclosures)