



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2019

Ms. LaNetra Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-35153

Dear Ms. Lary:

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# 801573.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for four specified police reports. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 261.201 of the Family Code, which provides as follows:

¹ Although you do not raise sections 552.130 and 52.147 of the Government Code in your brief, we understand the sheriff's office to assert these exceptions based on your markings.

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). You assert some of the submitted information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find you failed to demonstrate report number 09-23785 is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* Therefore, we conclude section 261.201 is not applicable to report number 09-23785, and it may not be withheld on that basis. However, upon review, we find report numbers 13-10619, 14-235529, and 19-26288 are subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victims listed in this information. However, report number 19-26288 does not identify a suspect. As such, this requestor may not have a right of access

to report number 19-26288 pursuant to section 261.201(k). As we are unable to determine whether the requestor is alleged to have committed the abuse or neglect, we will rule conditionally. If the requestor is alleged to have committed the abuse or neglect, then the sheriff's office must withhold report number 19-26288 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ However, if the requestor is not alleged to have committed the abuse or neglect, then pursuant to section 261.201(k), the sheriff's office may not withhold report number 19-26288 from the requestor under section 261.201(a). *Id.* § 261.201(k). We note the requestor is not accused of committing the alleged or suspected child abuse or neglect in report numbers 13-10619 and 14-235529. Therefore, the sheriff's office may not withhold report numbers 13-10619 and 14-235529 from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* Section 261.201(1)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your remaining arguments for the information at issue.

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. 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 in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state report numbers 09-23785, 13-10619, and 19-26288 pertain to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to report numbers 09-23785, 13-10619, and 19-26288.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the sheriff's office may withhold report numbers 09-23785 and 13-10619, as well as report number 19-26288, to the extent the requestor is not alleged to have committed the abuse or neglect at issue in report number 19-26288, under section 552.108(a)(2) of the Government Code.⁴

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

³ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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). 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, the right to privacy is a personal right that lapses at death and the common-law right to privacy does not encompass information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, information pertaining to a deceased individual may not be withheld on common-law privacy grounds. We also note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. See Open Records Decision Nos. 554 (1990), 448 (1986). Further, we note the requestor has a right of access to his date of birth and his living minor child's date of birth pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's and his living minor child's date of birth, the sheriff's office must withhold the remaining living public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to his motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from him. See *id.* § 552.023(a); ORD 481 at 4. However, the sheriff's office must withhold the motor vehicle record information you marked not belonging to the requestor under section 552.130 of the Government Code.

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person. Gov't Code § 552.147. Upon review, we agree the sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code.

In summary, if the requestor is alleged to have committed the abuse or neglect in report number 19-26288, then the sheriff's office must withhold report number 19-26288 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released to this requestor, the sheriff's office may withhold report numbers 09-23785 and 13-10619, as well as report number 19-26288, if the requestor is not alleged to have committed the abuse or neglect at issue in report number 19-26288, under section 552.108(a)(2) of the Government Code. With the exception of the requestor's and his living minor child's date of birth, the sheriff's office must withhold the remaining living public citizens' dates of birth 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 you marked not belonging to the requestor under section 552.130 of the Government Code. The sheriff's office may withhold the social security number you marked under section 552.147 of the Government Code. The sheriff's office must release the remaining information to this requestor.⁵

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

⁵ Because the requestor has a right of access to the information, the sheriff's office must again seek a decision from this office if it receives a request for this information from a different requestor. See Fam. Code § 261.201(k); Gov't Code § 552.023.

Ms. LaNetra S. Lary - Page 6

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Enc. Submitted documents

c: Requestor
(w/o enclosures)