



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2019-36219

Dear Ms. Lentz:

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# 802792.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident. You state you will withhold dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. This exception encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

- (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 Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

(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). Upon review, we find incident report number 2019-09-00399 was used or developed in an investigation of alleged or suspected child abuse or neglect 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 incident report number 2019-09-00399 is within the scope of section 261.201 of the Family Code. However, we note the requestor may be a parent, guardian, or managing conservator of some or all of the child victims listed in the information at issue, and the requestor is not alleged to have committed the abuse or neglect. As such, the requestor may have a right of access to this information pursuant to section 261.201(k). As we are unable to determine whether the requestor is a parent, guardian, or managing conservator of the child victims, we rule conditionally. If the requestor is not a parent, guardian, or managing conservator of any the child victims listed in the information at issue, then the sheriff's office must withhold incident report number 2019-09-00399 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestor is a parent, guardian, or managing

conservator of any of the child victims, then the sheriff's office may not withhold incident report number 2019-09-00399 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, to the extent the requestor is a parent, guardian, or managing conservator of any of the child victims in incident report number 2019-09-00399, we will consider your remaining arguments against disclosure of this information. Upon our review, however, we find you have failed to demonstrate incident report number 2019-09-00334 involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or that this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the sheriff's office may not withhold any portion of incident report number 2019-09-00334 under section 552.101 on this basis.

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 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 the submitted information relates to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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). Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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 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). Upon review, we find the basic information in incident report number

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

2019-09-00334 is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the individual's common-law right of privacy. Therefore, the sheriff's office must withhold the basic information related to incident report number 2019-09-00334 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the basic information in incident report number 2019-09-00399 is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the basic information in incident report number 2019-09-00399 under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is not a parent, guardian, or managing conservator of any of the child victims listed in incident report number 2019-09-00399, then the sheriff's office must withhold incident report number 2019-09-00399 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the basic information related to incident report number 2019-09-00334 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is a parent, guardian, or managing conservator of any of the child victims listed in incident report number 2019-09-00399, then the sheriff's office must release the basic information in incident report number 2019-09-00399 to this requestor.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 802792

Enc. Submitted documents

c: Requestor
(w/o enclosures)