



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2020

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

OR2020-15942

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# 832716 (ORR# 20PIA091).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all incident reports involving two specified addresses during specified time periods. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 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 section encompasses 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). Upon review, we find most of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect. *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, the information is within the scope of section 261.201 of the Family Code. You have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude, with the exception of the information we have marked for release, the sheriff’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we find you have failed to demonstrate the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. Accordingly, the sheriff’s office may not withhold the information we have marked for release under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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). 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff’s office must withhold the public citizens’ dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We understand you will redact information pursuant to section 552.130(c) of the Government Code.¹ We note the remaining information contains additional motor vehicle record information. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the additional information we have marked 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).² *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the sheriff's office must: (1) withhold the submitted information, with the exception of the information we have marked for release, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) withhold the public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the additional information we have marked under section 552.130 of the Government Code; (4) withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (5) release the remaining information.³

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->

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³ The information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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Sincerely,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 832716

Enc. Submitted documents

c: Requestor
(w/o enclosures)