



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Ms. Misti Bearden
Custodian of Records
Kaufman County Sheriff's Office
P.O. Drawer 849
Kaufman, Texas 75142

OR2020-22182

Dear Ms. Bearden:

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# 842983.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. You state the sheriff's office has released some of the requested information. You claim the remaining requested 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.

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 information protected by other statutes, such as 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) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also 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). Upon review, we find you have failed to demonstrate the information at issue 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 the information at issue under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). However, we note the individual whose privacy rights are implicated may be the requestor’s client. In that instance, the requestor has a special right of access to her client’s information that would ordinarily be withheld to protect her client’s privacy interests; thus, the information at issue may not be withheld on the basis of common-law privacy. *See Gov’t Code § 552.023(a)-(b)* (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the individual whose date of birth is at issue is not the requestor’s client, the sheriff’s office must withhold the date of birth we marked in Exhibit 3 under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to 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 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 information at issue pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section

552.108(a)(2) is applicable to the information at issue and conclude the sheriff's office may withhold Exhibits 4 and 5 under section 552.108(a)(2).¹

In summary, to the extent the individual whose date of birth is at issue is not the requestor's client, the sheriff's office must withhold the date of birth we marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may withhold Exhibits 4 and 5 under section 552.108(a)(2) of the Government Code. The sheriff's office must release the remaining information in Exhibit 3, which you state it has done.

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 842983

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e). Additionally, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.