



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2020

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-23470

Dear Ms. Domel:

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# 844464.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from different requests for information regarding requests for information received by the sheriff's office during specified periods of time. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, 552.147, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-15715 (2020). In that ruling, we concluded the following: (1) the sheriff's office must withhold certain marked information under section 552.101 in conjunction with section 411.083 of the Government Code and federal law, section 552.102(a), section 552.130 of the Government, section 552.137 of the Government Code, unless the owner of the marked e-mail address affirmatively consents to its public disclosure, and section 552.152 of the Government Code; (2) the sheriff's office may withhold the social security numbers of living individuals the sheriff's office marked under section 552.147 of the Government Code; (3) to the extent the individuals at issue are current or former employees of the sheriff's office and are currently licensed peace officers as defined by article 2.12 of the

¹ Although the sheriff's office does not cite to section 552.147 of the Government Code in its brief, we understand the sheriff's office to raise this exception based on its markings.

Code of Criminal Procedure, the sheriff's office must withhold the types of information we indicated under section 552.117(a)(2) of the Government Code; (4) to the extent the individuals at issue are no longer peace officers as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the types of information we indicated if these individuals are current or former employees of the sheriff's office and timely requested confidentiality under section 552.024 of the Government Code; (5) the sheriff's office must withhold the identifying information of certain individuals, which we indicated, under section 552.101 of the Government Code in conjunction with common law privacy; (6) the sheriff's office must also withhold public citizens' dates of birth and the additional information we indicated under section 552.101 of the Government Code in conjunction with common law privacy to the extent this information relates to living and identifiable individuals; and (7) the sheriff's office must release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2020-15715 was based have changed. Accordingly, the sheriff's office must continue to rely on Open Records Letter No. 2020-15715 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and 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.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (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 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. The sheriff’s office asserts some of the remaining information is confidential under section 58.008(b) of the Family Code. Upon review, however, we find the information at issue consists of administrative records that do not constitute juvenile law enforcement records for purposes of section 58.008(b). Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 argues some of the remaining information is subject to chapter 261 of the Family Code. Upon review, we find the sheriff’s office has not demonstrated any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the sheriff’s office has not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *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 Fam. Code ch. 261). Therefore, the sheriff’s office may not withhold any portion of the remaining information 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI

it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency not pertaining to the named individual must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Therefore, the sheriff's office must withhold FBI numbers under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). In Open Records Decision No. 393 (1983), this office also concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, we note, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded[.]" *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 Broad. Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); *see* 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).

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, to the extent the juveniles at issue are victims of abuse or neglect or juvenile offenders, the sheriff’s office must withhold the identifying information of the juveniles at issue, a representative sample of which we have marked, under section 552.101 in conjunction with common-law privacy. In addition, the sheriff’s office also must withhold the types of information we indicated, a representative sample of which we have marked, and public citizens’ dates of birth under section 552.101 in conjunction with common-law privacy to the extent this information relates to living and identifiable individuals.² However, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected. Further, we find you have failed to demonstrate any of the remaining information pertains to living individuals and is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 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. Accordingly, the sheriff’s office must withhold the motor vehicle record information you 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the sheriff’s office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). Upon review, we find the sheriff’s office may withhold the social security numbers of living individuals you marked under section 552.147 of the Government Code.

In summary, the sheriff’s office must continue to rely on Open Records Letter No. 2020-15715 as a previous determination and withhold or release the identical information in accordance with that ruling. The sheriff’s office must withhold FBI numbers under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. To the extent the juveniles at issue are victims of abuse or neglect or juvenile offenders, the sheriff’s office must withhold the identifying information of the juveniles at

² As our ruling on this information is dispositive, we need not address your remaining argument against it’s disclosure.

issue, a representative sample of which we have marked, under section 552.101 in conjunction with common-law privacy. The sheriff's office also must withhold the types of information we indicated, a representative sample of which we have marked, and public citizens' dates of birth under section 552.101 in conjunction with common-law privacy to the extent this information relates to living and identifiable individuals. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The sheriff's office may withhold the social security numbers of living individuals you marked under section 552.147 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 <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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 844464

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)