



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 23, 2022

Ms. Lisa Foster  
McLennan County Sheriff's Office  
901 Washington Avenue  
Waco, Texas 76701

OR2022-08381

Dear Ms. Foster:

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# 938219.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for all inventories of the evidence locker at the sheriff's office during a specified time period and records related to destruction of drugs and evidence from the evidence locker. The sheriff's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code 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

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<sup>1</sup> 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).

(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). Portions of the submitted information, including the representative sample of information we marked, consist of reports of alleged abuse or neglect made to the sheriff's office. However, we are unable to determine the age of the victims involved in the reports at issue. *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 must rule in the alternative. To the extent any portion of the submitted information, including the information we marked, involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the information we marked is subject to chapter 261 of the Family Code. In that instance, as the sheriff's office does not indicate it has adopted a rule that governs the release of this type of information, the sheriff's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, to the extent the information does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the information is not subject to chapter 261 of the Family Code and the sheriff's office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that instance, we will consider the applicability of other exceptions to disclosure of the information.

Section 552.101 of the Government Code also 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.

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<sup>2</sup> In that instance, as our ruling is dispositive for this information, we need not address the sheriff's office's argument against its disclosure.

Fam. Code § 58.008(b); *see also id.* § 51.03 (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. 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) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, find some of the remaining information involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the ages of the offenders involved in the information at issue. Accordingly, we must rule in the alternative. To the extent the remaining information at issue involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, as it does not appear any of the exceptions in section 58.008 apply, the sheriff’s office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup> However, to the extent an offense listed in the remaining information does not involve an offender was under ten years of age or was seventeen years of age or older at the time of the conduct, the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and the sheriff’s office may not withhold the information at issue under section 552.101 of the Government Code on that basis. Therefore, in that instance, we will consider the applicability of other exceptions to disclosure of the information at issue.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The sheriff’s office states the requestor seeks “information regarding a number of active criminal cases.” The sheriff’s office argues “These cases are still active and pending further investigation by the [McLennan County] District Attorney’s Office.” Upon review, we note some of the information relates to incidents of a non-criminal nature. Further, we note some of the information relates to incidents involving crimes for which the relevant statute of limitations has run, and the sheriff’s office does not inform us any criminal charges were filed within the limitations periods. We are thus unable to discern which of the incidents at issue relate to criminal investigations and prosecutions that were pending on the date the sheriff’s office received the instant request for information. Upon review, we find the sheriff’s office has failed to demonstrate the applicability of section 552.108(a)(1) to any portion of the remaining information, and the sheriff’s office may not withhold any of the remaining information on that basis.

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<sup>3</sup> In that instance, as our ruling is dispositive for this information, we need not address the sheriff’s office’s argument against its disclosure.

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. In Open Records Decision No. 393 (1983), this office 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). Upon review, therefore, we find to the extent any portion of the remaining information, including the representative sample of information we marked, consists of the identifying information of a victim of sexual assault, the sheriff's office must withhold such 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. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, to the extent any portion of the submitted information, including the information we marked, involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent an offense listed in the remaining information at issue involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the sheriff's office must withhold that information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent any portion of the remaining information, including the representative sample of information we marked, consists of the identifying information of a victim of sexual assault, the sheriff's office must withhold such information 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 we marked under section 552.130 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/be

Ref: ID# 938219

Enc. Submitted documents

c: Requestor  
(w/o enclosures)