



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2022

Ms. Janet Moreno Farmer
Assistant Criminal District Attorney
Tarrant County
401 West Belknap Street
Fort Worth, Texas 76196

OR2022-17394

Dear Ms. Farmer:

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# 953873.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for grand jury information pertaining to two specified indictments. The district attorney's office claims some of 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 article 20A.202(a) of the Code of Criminal Procedure, which provides "[g]rand jury proceedings are secret." Crim. Proc. Code art. 20A.202(a). However, article 20A.202 does not define "proceedings" for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes "proceedings" for purposes of the statutory predecessor of article 20A.202 and stated the term "proceedings" could "reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations." *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding).

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added the statutory predecessor to subsection (b) of article 20A.202. *See* Crim. Proc. Code art. 20A.202; FEDED. R. CRIM. P. 6(e)(6) ("Records, orders, and subpoenas relating to grand jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury."). Article 20A.202(b) states "[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury." Crim. Proc. Code art. 20A.202(b). However,

this provision does not define or explain what factors to consider in making such a determination, and even if we considered article 20A.202 to be a confidentiality provision, information withheld under this statute would be secret only “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

The district attorney’s office seeks to withhold some of the submitted information under article 20A.202. However, we conclude the district attorney’s office has not explained how the matters upon which the information at issue were based are still “before the grand jury” to warrant keeping the information secret. Thus, upon review of article 20A.202 and related case law, it is not apparent, and the district attorney’s office has failed to otherwise explain, how this provision makes the information at issue confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Therefore, the district attorney’s office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with article 20A.202 of the Criminal Code of Procedure.

Section 552.101 of the Government Code also encompasses article 19A.104 of the Code of Criminal Procedure. Article 19A.104 reads as follows:

(a) Except as provided by Subsection (c), information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror is confidential and may not be disclosed by the court, court personnel, or prosecuting attorney.

(b) Information that is confidential under Subsection (a) includes a person’s:

- (1) home address;
- (2) home telephone number;
- (3) social security number;
- (4) driver’s license number; and
- (5) other personal information.

(c) On a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

Crim. Proc. Code art. 19A.104. Upon review, we agree the information you marked is confidential under article 19A.104. Therefore, the district attorney’s office must withhold the information you marked under section 552.101 of the Government Code in conjunction with article 19A.104 of the Code of Criminal Procedure.

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. 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. In addition, 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 the identities of the juvenile victims in the remaining information, which you marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the public citizen's date of birth and identities of the juvenile victims you marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹

In summary, the district attorney's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with article 19A.104 of the Code of Criminal Procedure. The district attorney's office must withhold the public citizen's date of birth and the identities of the juvenile victims you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney'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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 953873

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.