



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2022

Ms. Amy Boyd
Open Records
Williamson County
508 South Rock Street
Georgetown, Texas 78626

OR2022-19496

Dear Ms. Boyd:

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# 957295.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information regarding requests for information received by the sheriff's office during defined periods of time. You state you will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ We understand you will also redact social security numbers pursuant to section 552.147(b) of the Government Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.1315, 552.136, 552.137, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² 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).

³ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 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 submitted information is subject to chapter 261 of the Family Code. Upon review, we find the information we marked was used or developed in investigations of alleged or suspected child abuse or neglect conducted by the Texas Department of Family and Protective Services. *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 we marked is within the scope of section 261.201 of the Family Code. Therefore, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

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

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 all FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of specified categories of individuals. *See id.* § 552.117. We note section 552.117 applies only to records that a governmental body is holding in an employment capacity. The remaining information at issue consists of information taken from public information requests maintained by the sheriff’s office and is not held by the sheriff’s office in an employment capacity. Accordingly, the sheriff’s office may not withhold any portion of the remaining information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Upon review, we find the information we indicated consists of personal information of an individual who may be among the types of individuals listed in section 552.1175(a). Thus, if the information we indicated under section 552.1175 relates to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the sheriff’s office must withhold such information under section 552.1175 of the Government Code. If the individuals at issue are not individuals to whom section 552.1175 applies or if no election is made, the sheriff’s office may not withhold the information we indicated under section 552.1175.

Section 552.101 of the Government Code 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 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* ORD 394; *cf.* Fam. Code § 58.008(b). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected.

Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Further, some of the information at issue consists of identifying information of individuals who may have been juvenile offenders or juvenile victims of abuse. However, because the information at issue does not reflect the age of these individuals, we must rule conditionally. Therefore, to the extent the information we marked consists of the identifying information of offenders who were ten years of age or older and under seventeen years of age at the time of the alleged conduct, or pertains to victims of abuse or neglect who were under eighteen years old at the time of the abuse or neglect, the sheriff's office must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the marked information does not pertain to juvenile offenders who were younger than ten years of age or seventeen years of age or older at the time of the alleged conduct, or does not pertain to a victim of abuse or neglect who was under eighteen years old at the time of the incident, the sheriff's office may not withhold this information on this basis. Regardless, the sheriff's office must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information pertains to identifiable individuals and is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.1315 of the Government Code states, in relevant part, as follows:

(a) Information is confidential and excepted from the [Act] if the information identifies an individual as:

(1) a victim of:

(A) an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by Section 3.01, Penal Code, as an offense described by Paragraph (A); or

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

Gov't Code § 552.1315(a). Upon review, we find the sheriff's office has failed to demonstrate the applicability of section 552.1315 of the Government Code to any portion of the remaining information at issue, and thus, the sheriff's office may not withhold any portion of the remaining information at issue on that basis.

Section 552.130 of the Government Code excepts from public disclosure 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. *See id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find the remaining information at issue does not consist of motor vehicle record information subject to section 552.130. Thus, the sheriff's office may not withhold the remaining information at issue under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the sheriff's office must withhold all insurance policy numbers in the remaining information under section 552.136 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). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

The sheriff's office seeks to withhold the identifying information of an undercover deputy in the remaining information under section 552.152 of the Government Code. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. The sheriff's office represents the release of the undercover deputy's identity would subject the deputy to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover deputy, which you marked. Accordingly, the sheriff's office must withhold the identifying information of the undercover deputy you marked under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must withhold all FBI numbers under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. To the extent the information we indicated under section 552.1175 of the Government Code relates to individuals to whom section 552.1175 applies and the individuals elect to restrict access to

the information in accordance with section 552.1175(b), then the sheriff's office must withhold such information under section 552.1175 of the Government Code. To the extent the information we marked consists of the identifying information of offenders who were ten years of age or older and under seventeen years of age at the time of the alleged conduct, or pertains to victims of abuse or neglect who were under eighteen years old at the time of the abuse or neglect, the sheriff's office must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must also withhold the additional information we marked 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 withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The sheriff's office must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff's office must withhold the identifying information of the undercover deputy you marked under section 552.152 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/be

Ref: ID# 957295

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)