



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2022

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

OR2022-21139

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# 957293.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named employee. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1315 of the Government Code. We have considered the claimed exceptions 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 section 261.201(a) of the Family Code, which provides as follows:

[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 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 asserts the submitted information is confidential under section 261.201. However, we find the sheriff's office has not established this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or consists of a report of alleged or suspected abuse or neglect. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Therefore, the submitted information is not confidential under section 261.201(a) of the Family Code and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). Although the sheriff's office claims the submitted information is subject to section 552.108(a)(2), we note this information pertains to an internal affairs investigation that is purely administrative in nature and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. As a result, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(2) to this information. Accordingly, the sheriff's office may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

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 the *Industrial Foundation* decision. *Id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and the identifying

information of juvenile victims of abuse or neglect is generally highly intimate or embarrassing. *Cf.* Fam. Code § 261.201; *see also* Open Records Decision No. 628 at 3 (1994) (identities of juvenile victims of serious sexual offenses must be withheld on basis of common-law privacy). Upon review, we find the submitted information that identifies the alleged victim at issue, which the sheriff's office has marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, this information is confidential common-law privacy. However, the remaining information that the sheriff's office has marked is not confidential under common-law privacy. Therefore, the sheriff's office may not withhold this information, which we have marked for release. Consequently, with the exception of the information that we have marked for release, the sheriff's office must withhold the information that it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹ 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 957293

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we do not address the other argument of the sheriff's office to withhold this information.