



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 11, 2022

Ms. Amy Roskilly  
Special Services  
Wise County Sheriff's Office  
200 Rook Ramsey Drive  
Decatur, Texas 76234

OR2022-23941

Dear Ms. Roskilly:

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# 964802.

The Wise County Sheriff's Office (the "sheriff's office") received a request for specified communications involving a named individual during a defined period of time. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note most of the submitted information, which we have marked, is not responsive to the instant request for information because it does not consist of communications. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release such information in response to this request.<sup>2</sup>

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." 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:

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<sup>1</sup> We understand you to raise section 552.108 based on the substance of your arguments.

<sup>2</sup> As we are able to make this determination, we need not consider your arguments against disclosure of this information.

(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). Upon review, we find you have failed to demonstrate any portion of the responsive information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the sheriff’s office may not withhold the responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Upon review, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to any of the responsive information. Therefore, the sheriff’s office may not withhold any of the responsive information at issue 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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> However, we find you have not demonstrated the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining responsive information may not be withheld under section 552.101 in conjunction with common-law privacy.

You seek to withhold the responsive 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 [required public disclosure] 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.

Gov't Code § 552.152. Upon review, we find you have not demonstrated the release of any of the remaining responsive information would subject an employee of the sheriff's office to a substantial threat of physical harm. Thus, the sheriff's office may not withhold any of the remaining responsive information 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 common-law privacy. The sheriff's office must release the remaining responsive 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,

Nick Ybarra  
Assistant Attorney General  
Open Records Division

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<sup>3</sup> As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)