



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Ms. Mary E. Miller
Assistant District Attorney
Denton County Sheriff's Office
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2022-24530

Dear Ms. Miller:

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# 966030 (ORR Nos. 2022-289, 2022-290, and 2022-291).

The Denton County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information created during a specified time period involving a specified address and a third request from a different requestor for information related to a specified incident involving the specified address. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office received the three requests for information in close temporal proximity. Further, we note the sheriff's office requested rulings from this office under section 552.301 of the Government Code on June 8, 2022. You seek to withhold some of the information at issue from the second requestor under section 552.108 of the Government Code but have not sought to withhold this same information from the first or third requestors. Thus, we assume you will release the information at issue to the first and third requestors. The Act does not permit the selective disclosure of information. *See Gov't Code* §§ 552.007(b), .021; *Open Records Decision No. 463 at 1-2 (1987)*. Section 552.007 provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See Gov't Code* § 552.007; *Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988)*. Although you raise section 552.108 for the information, this section is a

discretionary exception and does not make information confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the sheriff's office may not withhold information from one requestor under section 552.108 that it has released to the other requestors. Accordingly, with respect to the information the sheriff's office releases to the first or third requestor, the sheriff's office may not withhold such information from the second requestor under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can make information confidential, we will address your arguments under these exceptions for the information at issue.¹

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:

(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 the information related to incident report numbers 22-000600 and 22-000936 and event report numbers 22-0062700, 22-0044382, and 22-0042241 relates to reports of alleged or suspected child abuse or neglect. *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 find this information is subject to section 261.201 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information related to incident report numbers 22-000600 and 22-000936 and event report numbers 22-0062700, 22-0044382, and 22-0042241 is confidential pursuant to section 261.201 of the Family Code, and the sheriff's office must withhold it under section 552.101 of the Government

¹ We note 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 under the Act. *See* Gov't Code § 552.147(b).

Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find we find you have failed to demonstrate any portion of the remaining 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 Fam. Code § 261.001(1), (4). Therefore, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). You state some of the remaining information contains the identifying information of complainants who reported possible criminal activities to the sheriff's office. We have no indication the subjects of the complaint are aware of the identities of the complainants in this instance. Based upon your representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to the information at issue. Accordingly, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.³

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). We note one of the dates of birth you have marked pertains to an individual who has been de-identified pursuant to the informer's privilege. Therefore, the privacy

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

interest in that date of birth is sufficiently protected, and the sheriff's office may not withhold it under section 552.101 in conjunction with common-law privacy. Accordingly, the sheriff's office must withhold the date of birth belonging to an identifiable individual you have marked 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 remaining information you have marked under section 552.130 of the Government Code.

In summary, the sheriff's office: (1) must withhold the information related to incident report numbers 22-000600 and 22-000936 and event report numbers 22-0062700, 22-0044382, and 22-0042241 section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (3) must withhold the date of birth belonging to an identifiable individual you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) must withhold the remaining information you have marked under section 552.130 of the Government Code; and (5) 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,

Tim Neal
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)