



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2022

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2022-30776

Dear Ms. Villarreal:

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# 976856 (Ref. No. 2022-0147-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified internal affairs investigation. You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1315, and 552.136 of the Government Code. We have considered the exceptions 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 information made confidential by other statutes, such as section 58.008 of the Family Code, which provides, in pertinent part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) applies to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find some of the information at issue involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply. Accordingly, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹

Section 552.101 of the Government Code also encompasses information made confidential by section 261.201(a) of the Family Code, which provides:

[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.

Id. § 261.201(a). You assert the remaining information is confidential under section 261.201 of the Family Code. However, upon review, we conclude you have not established any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Therefore, the sheriff’s office may not withhold any

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

portion of 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 chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the federal government or other states. *See* 28 C.F.R. § 20.21; *see also* Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code makes CHRI maintained by the Texas Department of Public Safety (“DPS”) confidential, and only allows for the dissemination of this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize the dissemination of CHRI to a criminal justice agency, but a criminal justice agency may only release CHRI to another criminal justice agency if it is for a criminal justice purpose. *Id.* § 411.089(b)(1). Certain other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency, but may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411. However, we note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find you have failed to demonstrate any of the remaining information at issue consists of confidential CHRI. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

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 identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transactions between individual and governmental body protected under common-law privacy). However, we note the public

generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). We also note the public has a legitimate interest in the details of a crime. *See* Open Records Decision No. 400 at 4 (1983). *See generally* *Lowe v. Hearst Commc'ns, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.² However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code 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 you have failed to demonstrate the applicability of section 552.1315 of the Government Code to the remaining information, and the sheriff's office may not withhold any portion of it on that basis.

Section 552.136(b) 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

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

is collected, assembled, or maintained by or for a government body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). You state employee identification numbers are used to access employee benefits and payroll information. Accordingly, the sheriff’s office must withhold the insurance policy and employee identification numbers we have marked under section 552.136 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ *See* Gov’t Code § 552.117(a)(2); *see also id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). We note, for purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). We also note section 552.117 encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individuals whose information is at issue are current or honorably discharged peace officers as defined by article 2.12. If the individuals at issue are current or honorably discharged peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff’s office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the cellular telephone number at issue may only be withheld if the cellular telephone service is not paid for by a governmental body.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). As noted above, for purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c). Additionally, as previously noted, section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or 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 Gov't Code § 552.130.* Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the insurance policy and employee identification numbers we have marked under section 552.136 of the Government Code. If the individuals at issue are current or honorably discharged peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the cellular telephone number at issue may only be withheld if the cellular telephone service is not paid for by a governmental body. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 976856

Enc. Submitted documents

c: Requestor
(w/o enclosures)