



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2010

Ms. M. Ann Montgomery
Assistant Ellis County and District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 78165

OR2010-18085

Dear Ms. Montgomery:

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# 401599.

The Ellis County Sheriff's Office (the "sheriff") received two requests for information relating to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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). You state the submitted information was used or developed in an investigation of alleged abuse or neglect of a child. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section). Based on our review, we agree all the information relating to case numbers 10-12732 and 10-12736 and a portion of the information relating to case number 10-12737 is subject to section 261.201 of the Family Code. As you do not indicate the sheriff has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff must withhold case numbers 10-12732 and 10-12736 in their entirety and the information we have marked in case number 10-12737 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). We note, however, the remaining information in case number 10-12737 relates to a report of alleged assault against an adult. Upon review, we find you have failed to demonstrate the remaining information at issue was used or developed in an investigation under chapter 261 of the Family Code. Accordingly, the sheriff may not withhold any of the remaining information relating to case number 10-12737 under section 552.101 on that basis.

You also raise section 552.101 in conjunction with the doctrines of common-law and constitutional privacy for some of the information relating to case number 10-12737. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law

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

doctrine of privacy; constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find you have failed to demonstrate how any portion of the remaining information relating to case number 10-12737 is highly intimate or embarrassing. Further, we find you have not demonstrated how any portion of this report falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the sheriff may not withhold any portion of the remaining information relating to case number 10-12737 under section 552.101 of the Government Code on the basis of common-law or constitutional privacy.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case number 10-12737 relates to an open criminal prosecution and release of the information you have marked would interfere with that prosecution. Based on these representations and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976) (court delineates law enforcement interests present in active cases). Thus, the sheriff may withhold the information you have marked in case number 10-12737 under section 552.108(a)(1).²

You have marked some of the remaining information in case number 10-12737 under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130.³

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147.

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

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Accordingly, the sheriff may withhold the social security number you have marked pursuant to section 552.147 of the Government Code.⁴

In summary, the sheriff must withhold case numbers 10-12732 and 10-12736 in their entirety and the information we have marked in case number 10-12737 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff may withhold the remaining information you have marked in case number 10-12737 under section 552.108(a)(1) of the Government Code. The sheriff must withhold the Texas motor vehicle record information you have marked in case number 10-12737 under section 552.130 of the Government Code. The sheriff may withhold the social security number you have marked in case number 10-12737 pursuant to section 552.147 of the Government Code. The sheriff must release the remaining information in case number 10-12737.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 401599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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).