



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2013

Ms. M. Ann Montgomery-Moran  
Assistant County and District Attorney  
Ellis County and District Attorney's Office  
109 South Jackson  
Waxahachie, Texas 75165

OR2013-04154

Dear Ms. Montgomery-Moran:

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# 483347.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for the requestor's client's personnel file, disciplinary documentation, and information pertaining to any investigation related to the termination of the requestor's client. You state the sheriff's office has made most of the information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in pertinent part, 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 assert some of the submitted information is subject to chapter 261 of the Family Code. However, you do not explain, nor do the documents reflect, how the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to the information at issue, and it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses the common-law and constitutional rights of privacy. Common-law privacy protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The types of information considered intimate or 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

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 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 some of the submitted information is highly intimate or embarrassing and not of legitimate public interest. In this instance, however, the requestor is the attorney for one of the individuals whose information is at issue. As her client's representative, the requestor has a right of access to any of her client's private information that would otherwise be excepted from public disclosure. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or his authorized representative requests information concerning the individual). However, we find 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.<sup>1</sup> Further, we find the sheriff's office has failed to demonstrate how any of the remaining information is protected by common-law or constitutional privacy. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy or constitutional privacy.

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 current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee 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 who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the employee whose information we have marked timely requested confidentiality under section 552.024, the sheriff's office must withhold her information under section 552.117(a)(1) of the Government Code. If the employee at issue did not make a timely election under section 552.024, the sheriff's office may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Upon review, we find the e-mail address you have marked is not of the types specifically excluded by

---

<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure.<sup>3</sup>

In summary, 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. If the employee whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold her information under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure. The sheriff's office must release the remaining information.<sup>4</sup>

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/tch

---

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. If the sheriff's office receives another request for this information from a different requestor, then the sheriff's office should again seek a decision from this office.

Ref: ID# 483347

Enc. Submitted documents

c: Requestor  
(w/o enclosures)