



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2014

Ms. Renae Mayfield  
Custodian of Records  
Kaufman County Sheriff's Office  
P.O. Box 849  
Kaufman, Texas 75142

OR2014-07018

Dear Ms. Mayfield:

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# 520969.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for all documentation for any complaint or investigation regarding disciplinary matters in internal affairs files for any employee who participated in any law enforcement investigation or was named in any offense or arrest report during a specified period of time. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state portions of the submitted information are not responsive to the instant request for information because they do not contain the type of information specified in the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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 other statutes make confidential, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state portions of the submitted information are confidential under section 261.201. However, upon review, we find you have failed to demonstrate the information at issue involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or how the information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, the sheriff’s office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). Section 58.007 provides, in pertinent part, as follows:

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

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

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). You state the information in Exhibit 8 is confidential under section 58.007(c). However, some of the information in Exhibit 8 consists of solely internal affairs investigation records. Records of an internal affairs investigation do not constitute juvenile law enforcement records for the purposes of section 58.007(c) of the Family Code. Therefore, the sheriff’s office may not withhold the internal affairs investigation information in Exhibit 8 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Upon review, however, we conclude the remaining information in Exhibit 8 consists of law enforcement records involving juvenile delinquent conduct occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the remaining information in Exhibit 8 we have marked is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

You claim Exhibit 9 is excepted under section 552.108(a)(1). Section 552.108(a)(1) 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). 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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* ORD No. 350 at 3-4. However, you state Exhibit 9 relates to a pending prosecution. Based on your representation and our review, we find the release of Exhibit 9 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. Department of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to Exhibit 9.

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

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). As noted above, section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d at 320; *Morales*, 840 S.W.2d at 519 ; *see also* ORD 350 at 3-4. You seek to withhold Exhibits 2, 5, 6, and 7 under section 552.108(a)(2). Upon review, we find the majority of the information at issue was generated as part of an internal administrative investigation conducted by the sheriff's office. You do not provide any arguments explaining how the internal investigations resulted in criminal investigations or prosecutions. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to this information, and the sheriff's office may not withhold the internal affairs information under section 552.108(a)(2).

You state the information pertaining to the underlying offenses relate to criminal investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the portion of the information in Exhibits 2,5,6, and 7 that relates to the criminal investigations, which we have marked.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold Exhibit 9 under section 552.108(a)(1) and the information we have marked in Exhibits 2,5,6, and 7 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that

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<sup>2</sup>As our ruling is dispositive for this information, we need not consider your remaining argument against disclosure of this information.

are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You state portions of the remaining information contain 9-1-1 caller information. However upon review we find that none of the information contains the originating telephone numbers or addresses of 9-1-1 callers that were furnished by a service supplier. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.

Section 552.101 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 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 transaction between individual and governmental body protected under common-law privacy). This office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. 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. ORD 455 at 4. 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. *Id.* 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.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find you have failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriffs' office may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, emergency contact information and social security number, and whether the peace officer has family members information regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>3</sup> Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicles operator's license, driver's license, motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the sheriff's office must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.<sup>4</sup>

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

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<sup>3</sup>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).

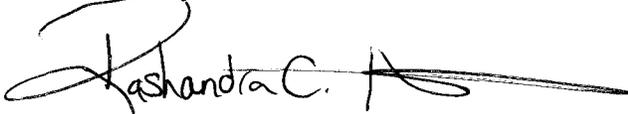
<sup>4</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 58.007(c) of the Family Code. With the exception of basic information, the sheriff's office may withhold Exhibit 9 under section 552.108(a)(1) of the Government Code and the information we have marked in Exhibits 2,5,6, and 7 under section 552.108(a)(2) of the Government Code. 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 withhold the information we have marked under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information you have marked, as well as the information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 520969

Enc. Submitted documents

c: Requestor  
(w/o enclosures)