



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2015

Mr. Caleb Thornton
Assistant County Attorney
County of Montgomery
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2015-05476

Dear Mr. Thornton:

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# 557116 (Montgomery ORR #14PIA0685).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to two specified addresses. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information consist of court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022(a)(17). Therefore, the court-filed documents may not be withheld under section 552.108. However, because section 552.101 of the Government Code makes information confidential, we will address

the applicability of this exception to the court-filed documents, as well as the remaining 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 protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Report number 02A012738 involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, report number 02A012738 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides 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). You state report numbers 07A014626 and 14A004405 were used or developed in an investigation of alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree report numbers 07A014626 and 14A004405 are subject to section 261.201 of the Family Code. *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 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). As you do not indicate the sheriff’s office 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’s office must withhold report numbers 07A014626 and 14A004405 in their entireties 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).

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

¹As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold report number 09A004152 in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, we agree that portions of report number 09A004152 are highly embarrassing and not of legitimate public interest. Accordingly, the sheriff's office must withhold the information we have marked in report number 09A004152 under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code § 552.130(a)(1)-(2)*. Upon review, we find the sheriff's office must withhold the motor vehicle record information we have marked report number 09A004152 under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold report number 02A012738 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The sheriff's office must withhold report numbers 07A014626 and 14A004405 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we have marked in report number 09A004152 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 in report number 09A004152 under section 552.130 of the Government Code. The remaining information in report number 09A004152 must be released.³

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the remaining information contains social security numbers. 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)*.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 557116

Enc. Submitted documents

c: Requestor
(w/o enclosures)