



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Ms. Crystal Koonce  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2015-15172

Dear Ms. Koonce:

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# 573016.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all audio, video, and written statements relating to all incidents involving a specified address during a specified time period. The sheriff's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions the sheriff's office claims 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 exception encompasses information other statutes make confidential. Section 58.007 provides, in relevant part:

(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:

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<sup>1</sup>Although the sheriff's office raises section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the correct exception to raise for information the sheriff's office does not hold in its capacity as employer.

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). 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). Upon review, we find the information the sheriff's office has marked involves juvenile delinquent conduct occurring after September 1, 1997. Therefore, the information at issue is generally confidential under section 58.007(c). We note, however, the requestor is a parent of one of the juvenile offenders at issue. Therefore, the requestor has a right to inspect juvenile law enforcement records concerning his juvenile child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Section 58.007(j)(2) provides, however, information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address whether any portion of the information at issue is excepted from disclosure.

Section 552.101 of the Government Code also encompasses 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 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the information relating to case number 2015-04-00845 was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, the information at issue is subject to section 261.201 of the Family Code. We note, however, the requestor is the parent of the one of the child

victims named in the submitted information and is not alleged to have committed the suspected abuse. Therefore, the information relating to case number 2015-04-00845 may not be withheld from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(l)(2). Accordingly, we will address whether any portion of the information at issue is excepted from disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states the information it has marked relates to concluded cases that did not result in a conviction or deferred adjudication. Based on the sheriff's office's representation, we conclude the sheriff's office may withhold the information it has marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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). This office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). Upon review, we find the video recordings we have marked contain information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. The sheriff's office states it does not possess the technological capability to redact information from the video recordings. Thus, we find the sheriff's office must withhold the entirety of the video recordings we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> *See* Open Records Decision No. 364 (1983).

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime

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<sup>2</sup>As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure of this information.

Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find none of the remaining information constitutes confidential CHRI; thus, the sheriff’s office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.1175 of the Government Code provides, in part, the following:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

*Id.* § 552.1175(a)(1), (b). Upon review, we find none of the remaining information is subject to section 552.1175 of the Government Code; thus, the sheriff’s office may not withhold it on that basis.

Section 552.130 of the Government Code provides 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 is excepted from public release. *Id.* § 552.130(a). Upon review, we find none of the remaining information is subject to section 552.130 of the Government Code; thus, the sheriff’s office may not withhold it on that basis.

In summary, the sheriff's office may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the entirety of the video recordings we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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 [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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 573016

Enc. Submitted documents

c: Requestor  
(w/o enclosures)