



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2009

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

OR2009-01006

Dear Ms. Lentz:

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# 333171.

The Williamson County Sheriff's Office (the "sheriff") received a request for all information pertaining to a named individual including a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code.¹ 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. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹ Although you also raise section 552.117 for portions of the submitted information, we note section 552.1175 is the proper exception in this instance because the sheriff does not hold the submitted information in an employment capacity.

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, 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). A portion of the information at issue relates to an investigation of the alleged sexual assault of a child. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011). Upon review, we find that this information falls within the scope of section 261.201. Additionally, there is no indication that the sheriff has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find that a portion of the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). The sheriff must withhold the information we have marked under section 552.101 of the Government Code.² However, you have failed to demonstrate the applicability of section 261.201 to any of the remaining information. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses 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. The relevant language of 58.007 reads as follows:

(c) . . . 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

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

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, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). A portion of the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. In addition, a portion of the submitted information pertains to a juvenile runaway. Thus, we find that this report involves a juvenile engaged in conduct in need of supervision. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the section 58.007 exceptions apply. Thus, the information we have marked is confidential pursuant to section 58.007. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Although you raise section 58.007 of the Family Code for portions of the remaining submitted information, you have not explained, and the information does not reflect, how it constitutes law enforcement records or files concerning an identified juvenile suspect or offender. In addition, you have failed to inform us, nor are we able to determine, the age of the suspects in these investigations. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information from disclosure when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

In this instance, the sheriff informs us the information it has marked identifies an undercover officer, the release of which would likely cause the officer to face imminent threat of physical danger. Based on the sheriff’s representations and our review, we agree that the sheriff must withhold the information it has marked under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 inform us the information you have marked under section 552.108(a)(1) relates to an ongoing criminal investigation. Based on your representations, we conclude section 552.108(a)(1) is applicable to the information you have marked. *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 that are present in active cases).

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 that 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information you have marked under section 552.108(a)(2) relates to concluded investigations that did not result in convictions or deferred adjudications. Based on your representation, we conclude section 552.108(a)(2) is applicable to the information you have marked.

However, we note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* ORD 127. Thus, with the exception of basic information, the sheriff may withhold the information you have marked under section 552.108 of the Government Code. We note you have the discretion to release all or part of the submitted information that is not otherwise confidential by law. Gov’t Code § 552.007.

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). If the peace officer at issue notifies the sheriff that she chooses to keep her personal information confidential in accordance with section 552.1175(b)(2), except where we have marked for release, the sheriff must withhold the personal information you have marked, and the additional information we have marked, pursuant to section 552.1175. If no election is made, the sheriff may not withhold this information under section 552.1175.

In the event the peace officer at issue does not elect to withhold the personal information marked under section 552.1175, we note some of the remaining information at issue is confidential under common-law privacy. As noted above, common-law privacy excepts information when it meets the two prong test as set out in *Industrial Foundation*. See *Indus. Found.*, 540 S.W.2d at 685. 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. *Id.* at 683. This office has found that the identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office has also found that common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007. If the peace officer at issue does not elect confidentiality under section 552.1175 of the Government Code, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The sheriff must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Upon review, we agree that the sheriff may withhold the social security numbers you have marked under section 552.147 of the Government Code.

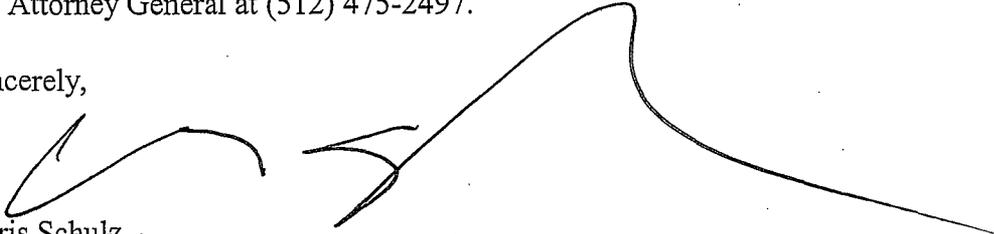
In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and section 261.201 of the Family Code. The sheriff must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the special circumstances aspect of common-law privacy. With the exception of basic information, the sheriff may withhold the information you have marked under

section 552.108 of the Government Code. If the peace officer at issue notifies the sheriff that she chooses to keep her personal information confidential in accordance with section 552.1175(b)(2), except where we have marked for release, the sheriff must withhold the personal information you have marked, and the additional information we have marked, pursuant to section 552.1175. If the peace officer at issue does not elect confidentiality under section 552.1175 of the Government Code, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information you have marked under section 552.130 of the Government Code. The sheriff may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 at (512) 475-2497.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 333171

Enc. Submitted documents

cc: Requestor
(w/o enclosures)