



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Ms. Jo Spurger
Somervell County Sheriff's Office
750 East Gibbs Boulevard
Glen Rose, Texas 76043

OR2009-12244

Dear Ms. Spurger:

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# 353857.

The Somervell County Sheriff's Office (the "sheriff's office"), received a request for the arrest warrant, offense report, evidence transmittal sheet, prosecution report, witness reports and mug shot in a specified case. You state you have released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You state you have notified third parties whose privacy may be implicated. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances).

We have received correspondence from the Glen Rose Medical Center Nursing Home Facility and the Texas Department of Aging and Disability Services ("DADS").¹ We have considered the exceptions you claim and reviewed the submitted comments and representative sample of information.²

¹DADS has submitted information it seeks to withhold from disclosure. We note that the sheriff did not submit this information. This ruling does not address information that was not submitted by the sheriff and is limited to the information submitted as responsive by the sheriff's office. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You contend that the submitted information is excepted from disclosure under section 552.108(a)(4) of the Government Code. This section provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information it seeks to withhold. *See id.* §§ 552.108(a)(4), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. In this case, we understand you to have treated the request for the "prosecution report" as a request for the Somervell County District Attorney's (the "district attorney") prosecution file pertaining to the specified prosecution. *See* Open Records Decision 561 at 8-9 (1990) (governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control). We also understand you to contend that the instant request for information is essentially for the district attorney's case file for the matter in question. You state the submitted information is "an exact duplicate" of information in the district attorney's file and "comprises the bulk of the district attorney's file for the prosecution" in this case. Therefore, upon review, we conclude that section 552.108(a)(4) is applicable to the documents you have marked in the submitted information.

As you acknowledge 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle* and includes "a detailed description of the offense." *See* 531 S.W.2d at 186-7. However, we note the information the sheriff's office has released does not contain information sufficient to qualify as a "detailed description of the offense" as required by

Houston Chronicle. Therefore, the sheriff's office must release a sufficient portion of the narrative section of the incident report in question to encompass a detailed description of the offense.³ Accordingly, with the exception of a detailed description of the offense, the sheriff's office may withhold the information you have marked under section 552.108(a)(4) of the Government Code.⁴

You raise section 261.201 of the Family Code for the remaining information. Section 261.201 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 purposes consistent with [the Family 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). Upon review, we agree that the information you have marked was used or developed in an investigation into alleged child abuse under chapter 261. *See id.* §§ 261.001 (defining "abuse" 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, we find that this information is within the scope of section 261.201 of the Family Code. You do not inform us that the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety from public disclosure pursuant to section 552.101 of the Government Code.

In summary, with the exception of basic information, including a detailed description of the offense, the sheriff's office may withhold the information you have marked under section 552.108(a)(4). The sheriff's office must withhold the information we have marked under section 261.201 of the Family Code.

³We note that basic information does not include information about witnesses. *See* Open Records Decision No. 127 (1976)

⁴As our ruling is dispositive for this information, we need not address DADS's argument.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 353857

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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