



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 5, 2010

Ms. M. Ann Montgomery  
Assistant County & District Attorney  
Ellis County  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2010-00139

Dear Ms. Montgomery:

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# 366313.

The Ellis County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

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<sup>1</sup>Although you also raise section 552.103 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. Since you have not submitted arguments concerning this exception, we assume that you no longer urge it. *See* Gov't Code §§ 552.301(b), (e), .302.

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 department 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information reflects that it was used or developed in an investigation of alleged or suspected child neglect. *See id.* § 261.001 (defining “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). Therefore, we find the submitted information is generally confidential under section 261.201 of the Family Code. However, the requestor is the parent of the child victim listed in the report, and the requestor is not alleged to have committed the suspected neglect. In this instance, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You assert some of the submitted information is excepted from public disclosure under sections 552.101 in conjunction with common-law privacy and 552.108 of the Government Code. Accordingly, we will consider your remaining arguments against disclosure for this information.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information you 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. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), and includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Accordingly, with the exception of basic information, the sheriff may withhold the information you have marked under section 552.108(a)(2). In releasing basic information, the sheriff must withhold the reporting party’s identity under section 552.101 in conjunction with section 261.201(l)(3). The remaining basic information must be released.<sup>2</sup>

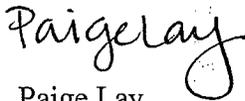
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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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](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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 366313

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)