



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

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

OR2010-00517

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# 366774.

The Ellis County Sheriff's Department (the "sheriff") received a request for records of all police calls to a specified address, as well as information related to other arrests for individuals listed in those reports. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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). You claim some of the submitted reports are confidential under section 58.007 because they pertain to juvenile conduct. Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of the Family Code). 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). We have reviewed the submitted information and find that report numbers 04-05409 and 04-08743 both involve allegations of juvenile delinquent conduct that occurred after September 1, 1997. Thus, these two reports are subject to section 58.007(c). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply. Therefore, report numbers 04-05409 and 04-08743 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, the remaining information does not identify a juvenile suspect or offender for purposes of section 58.007. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). Some of the submitted information consists of a report of alleged or suspected child abuse or neglect made under chapter 261. *See id.* § 261.001(1) (defining “abuse” or “neglect” for the purposes of chapter 261 of the Family Code); *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). Based on your representation and our review, we conclude that report numbers 05-13539 and 05-15315 are within the scope of section 261.201 of the Family Code. You do not indicate that the sheriff has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that report numbers 05-13539 and 05-15315 are confidential pursuant to section 261.201 of the Family Code, and the sheriff must withhold them under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* The sheriff has failed to demonstrate, however, that any of the remaining information is confidential pursuant to section 261.201; therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. 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. Upon review, we conclude the information we have marked is highly intimate and embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(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). A governmental body claiming section 552.108 must reasonably explain how and why the 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 state that report number 05-14122 relates to pending criminal case. Based on your representation and our review of the information at issue, we conclude that the sheriff has demonstrated that release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law

enforcement interests that are present in active cases). Therefore, the sheriff may generally withhold report number 05-14122 under section 552.108(a)(1) of the Government Code.

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. See 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 concluded in a final result other than a conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that the reports you have marked in the remaining information pertain to investigations that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude that the sheriff has demonstrated that section 552.108(a)(2) is applicable to these reports. Therefore, we conclude that the sheriff may generally withhold the information you have marked under section 552.108(a)(2) of the Government Code.

However, as you acknowledge, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See *id.* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you have marked to be released, the sheriff may withhold the incident reports at issue under section 552.108(a)(1) and 552.108(a)(2) of the Government Code.

Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas driver's license numbers and license plate numbers we have marked under section 552.130 of the Government Code.¹

You claim the remaining information contains social security numbers excepted from disclosure under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we find that the remaining information does not contain any social security numbers. Consequently, the sheriff may not withhold any of the remaining information under section 552.147 of the Government Code.

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the sheriff must withhold report numbers 04-05409 and 04-08743 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff must withhold report numbers 05-13539 and 05-15315 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold report number 05-14122 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the sheriff may withhold the reports you have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the Texas driver's license numbers and license plate numbers we have marked under section 552.130 of the Government Code. The remaining information must be released.

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

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 366774

Enc. Submitted documents

c: Requestor
(w/o enclosures)