



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
William B. Travis Building
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-03594

Dear Ms. Rangel:

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# 372530.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information related to offense report numbers 09-33636 and 07-5556. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(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). You state offense report number 07-5556 was used or developed in an investigation of alleged or suspected child neglect conducted by the sheriff. *See id.* §§ 261.001 (defining “neglect” for 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) 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). Accordingly, we will consider your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(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.

...

(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). 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). Offense report numbers 07-5556 and 09-33636 each involve juvenile delinquent conduct that

occurred after September 1, 1997. *See id* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Therefore, this information is subject to section 58.007(c). It does not appear any of the exceptions in section 58.007 apply to offense report number 07-5556. Therefore, offense report number 07-5556 is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld under section 552.101 of the Government Code.²

We note the requestor is the parent of the juvenile offender listed in offense report number 09-33636. Therefore, the requestor may inspect or copy any law enforcement records concerning his own child under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Therefore, because you assert offense report number 09-33636 is excepted under sections 552.101 and 552.108 of the Government Code, we will address the applicability of these exceptions to offense report number 09-33636.

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, and provide documentation showing, offense report number 09-33636 relates to an investigation and prosecution that is currently pending with the sheriff. Based on this representation, we conclude the release of this information 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). Thus, section 552.108(a)(1) is applicable to offense report number 09-33636.

However, 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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the sheriff may withhold offense report number 09-33636 under section 552.108(a)(1).

Next, you claim common-law privacy for portions of the basic information. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which

²As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

protects information that (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). The type 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. We note portions of the detailed description of the offense are highly intimate and embarrassing and not of legitimate concern to the public. However, the requestor is the parent of the minor whose privacy interest is implicated. Thus, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy rights. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the sheriff may not withhold any portion of the basic information pursuant to section 552.101 on the basis of common-law privacy.

In summary, the sheriff must withhold offense report number 07-5556 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the basic information, to which the requestor has a right of access under section 58.007(e) of the Family Code, the sheriff may withhold offense report number 09-33636 under section 552.108(a)(1) of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 372530

Enc. Submitted documents

c: Requestor
(w/o enclosures)