



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
William B. Travis Building
301 Jackson St., Suite 728
Richmond, Texas 77469

OR2010-05038

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# 375320.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for call sheets from 2009 made by various named individuals, and a specified incident report. You state you have released some information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exception 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 information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the 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). You state report numbers 09-10972 and 10-603 are confidential under section 261.201. Upon review, we find that report number 09-10972 consists of a report of alleged or suspected child abuse or neglect made under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, report number 09-10972 falls within the scope of section 261.201. You have not indicated that the sheriff has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, we conclude that the sheriff must withhold report number 09-10972 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201). However, report number 10-603 relates to a child custody issue. You have not demonstrated how report number 10-603 relates to a report or investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See* Fam. Code § 261.001(1), (4); Gov’t Code § 552.301(e)(1)(A) (stating that a governmental body must explain how claimed exception to disclosure applies). We therefore conclude report number 10-603 is not confidential pursuant to section 261.201 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

You raise section 552.108(a)(1) of the Government Code for report number 09-33297. 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 09-33297 relates to a pending criminal investigation. Based on this representation, we conclude that 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). Accordingly, we find section 552.108(a)(1) is applicable to report number 09-33297.

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

You raise section 552.108(a)(2) for report numbers 09-10331 and 10-603. 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. You state report numbers 09-10331 and 10-603 pertain to closed cases that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to report numbers 09-10331 and 10-603.

However, 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 Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff may withhold report number 09-33297 under section 552.108(a)(1) of the Government Code and report numbers 09-10331 and 10-603 under section 552.108(a)(2) of the Government Code.²

However, you argue portions of the basic information in report numbers 09-10331 and 09-33297 are confidential under common-law privacy. You also argue portions of call slip A091130487 are confidential under common-law privacy. Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. The types of information considered intimate or 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. See *id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

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

However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the remaining basic information in report numbers 09-10331 and 09-33297 or call slip A091130487 may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff must withhold report number 09-10972 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff may withhold report number 09-33297 under section 552.108(a)(1) of the Government Code and report numbers 09-10331 and 10-603 under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information we marked in call slip A091130487 and the information we marked in the basic information in report number 09-10331 under section 552.101 in conjunction with common-law privacy. 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 375320

Enc. Submitted documents

cc: Requestor
(w/o enclosures)