



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Ms. Robin King
Custodian of Records
Kaufman County Sheriff's Office
P. O. Drawer 849
Kaufman, Texas 75142

OR2010-11885

Dear Ms. King:

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# 389416.

The Kaufman County Sheriff's Office (the "sheriff") received a request for report number 2010-02871. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in part:

(a) Except as provided by Section 261.203, 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 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 [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)(2). Report number 2010-02871 reflects it was used or developed in an investigation by the sheriff of alleged child abuse and of alleged child neglect. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code section 22.011 or section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Thus, this report is subject to section 261.201(a). However, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the sheriff may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also raise section 552.101 in conjunction with common-law privacy, section 552.102, and section 552.108(a)(1) for report number 2010 02871, we will address your arguments for the submitted report.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). Section 552.102 applies only to private

information in a personnel file of a government employee. *See id.* § 552.102. The submitted information consists of law enforcement records created as part of a criminal investigation. Because this information does not consist of personnel records of a government employee, the sheriff may not withhold any of the submitted information under section 552.102.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. *Id.* at 683. The submitted information relates to alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or another sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See Open Records Decisions Nos. 393 (1983), 339 (1982); see also Open Records Decision No. 440 (1986)* (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the submitted information demonstrates that the requestor knows the identity of the alleged sexual assault victim. However, as noted above, the requestor is a parent of the listed minor victim, and therefore is the authorized representative of the individual whose privacy interests are at issue in this instance. Under section 552.023 of the Government Code, a person's authorized representative has a special right of access to information that would otherwise be excepted from public disclosure of the basis of the person's privacy. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, the sheriff may not withhold any of the submitted information from this requestor under section 552.101 in conjunction with common-law privacy.

Finally, you claim the submitted information is excepted by section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 the sheriff's investigation related to report number 2010-02871 is pending. Based on this representation and our

review, we determine release of the report at this time 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 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 the submitted information.

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*. *See Houston Chronicle*, S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information that must be released to this requestor, the sheriff may withhold report number 2010-02871 under section 552.108(a)(1) of the Government Code.¹

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

¹The requestor has a special right of access under section 261.201(k) of the Family Code and section 552.023 of the Government Code to the basic information being released. If the sheriff receives another request for this same information from an individual who does not have a right of access to the information, the sheriff should request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 389416

Enc. Submitted documents

cc: Requestor
(w/o enclosures)