



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Ms. Michelle T. Rangel
Assistant County Attorney
County of Fort Bend
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2010-18442

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# 402158.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the "Pecan Grove Contract Deputies significant incident reports" for a specified time period, daily logs for a specified time period, and "daily logs or incident reports involving any Pecan Grove Deputy serving any warrants within the additional law enforcement agreement with Pecan Grove Municipal Utility District" for a specified time.¹ You state the sheriff has released some of the requested information. You claim that the information at issue is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 provides in pertinent part as follows:

¹You indicate the sheriff sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), 552.302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). For purposes of section 58.007(c), “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 10-22320 (in Exhibit C) and offense reports 10-15325, 10-18381, and 10-19961 (in Exhibit D) each involve a child engaged in conduct indicating a need for supervision that occurred after September 1, 1997. As such, these reports constitute juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply to any of the reports at issue. Accordingly, the sheriff must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.³

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides:

- (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:

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of offense report 10-22320 (in Exhibit C) and offense reports 10-15325, 10-18381, and 10-19961 (in Exhibit D).

(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 offense reports 10-14301 and 10-19450 (in Exhibit E) are confidential under section 261.201 of the Family Code because the reports document referrals were made to Child Protective Services (“CPS”) in each instance. However, we note offense report 10-14301 does not relate to alleged or suspected abuse or neglect of a child. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Although a referral was made to CPS, you have not demonstrated how offense report 10-14301 was used or developed in an investigation under chapter 261. Therefore, we determine offense report 10-14301 is not confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

However, we find offense report 10-19450 consists of a report of alleged or suspected child abuse or neglect made under chapter 261. *See 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), 261.001(1), (4). Therefore, offense report 10-19450 falls within the scope of section 261.201. As you do not indicate that the sheriff has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption and based on our review, we determine offense report 10-19450 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold offense report 10-19450 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that offense reports 10-15169, 10-15785, 10-17095, 10-17964, 10-18463, 10-20058, 10-20146, 10-20244, 10-20996, 10-21163, 10-21429, 10-22404, 10-22417, and 10-23226 (in Exhibit C), offense reports 10-14653, 10-16227, 10-16328, 10-16996, and

⁴As our ruling is dispositive of offense report 10-19450, we need not address your remaining argument against disclosure of this report.

10-20575 (in Exhibit D), and offense reports 10-15333, 10-16523, 10-20175, 10-21662, 10-21672, and 10-21779 (in Exhibit E) are currently pending with the Fort Bend County Sheriff's Office; offense reports 10-21389 and 10-21896 (in Exhibit D) are active with the Justice of the Peace; and offense reports 10-17381, 10-20190, and 10-23135 (in Exhibit E) are active with the Fort Bend County District Attorney's Office. Based upon your representation and our review, we conclude that the release of these offense reports 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we agree that section 552.108(a)(1) is applicable to the offense reports at issue.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that offense reports 10-15893, 10-16569, 10-17882, 10-18846, 10-19297, 10-19692, and 10-23691 (in Exhibit C), offense reports 10-17600 and 10-18279 (in Exhibit D), and offense reports 10-14301, 10-14446, 10-15213, 10-16399, 10-17207, 10-20077, 10-22242, 10-22531, and 10-23329 (in Exhibit E) pertain to cases that concluded in results other than convictions or deferred adjudications. Offense report 10-17207 pertains to property found in a patrol vehicle. You do not demonstrate how offense report 10-17207 relates to a criminal investigation. Thus, offense report 10-17207 does not fall within the scope of section 552.108(a)(2). With the exception of offense report 10-17207, we agree that section 552.108(a)(2) is applicable to the offense reports at issue.

We note, 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 531 S.W.2d at 186-88. We note that basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Thus, with the exception of the basic front page offense and arrest information, the sheriff may withhold offense reports 10-15169, 10-15785, 10-17095, 10-17964, 10-18463, 10-20058, 10-20146, 10-20244, 10-20996, 10-21163, 10-21429, 10-22404, 10-22417, and 10-23226 (in Exhibit C), offense reports 10-14653, 10-16227, 10-16328, 10-16996, 10-20575, 10-21389, and 10-21896 (in Exhibit D), and offense reports 10-15333, 10-16523, 10-17381, 10-20175, 10-20190, 10-21662, 10-21672, 10-21779, and 10-23135 (in Exhibit E) under section 552.108(a)(1) of the Government Code.⁵ With the exception of the basic front page offense and arrest

⁵We note the basic information in offense reports 10-17381 and 10-23135 (in Exhibit E) contains the social security numbers of arrestees. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

information, the sheriff may withhold offense reports 10-15893, 10-16569, 10-17882, 10-18846, 10-19297, 10-19692, and 10-23691 (in Exhibit C), offense reports 10-17600 and 10-18279 (in Exhibit D), and offense reports 10-14301, 10-14446, 10-15213, 10-16399, 10-20077, 10-22242, 10-22531, and 10-23329 (in Exhibit E) under section 552.108(a)(2) of the Government Code. We will now address your arguments against disclosure of the basic information and offense report 10-17207 (in Exhibit E).

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Furthermore, we note an individual's current involvement in the criminal justice system, including active warrant information, does not constitute CHRI. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find that the basic information and offense report 10-17207 (in Exhibit E) do not contain CHRI for purposes of chapter 411. Accordingly, the basic information and offense report 10-17207 are not confidential under chapter 411, and the sheriff may not withhold the information under section 552.101 of the Government Code on that basis.

You contend the basic information in offense report 10-15893 (in Exhibit C), offense reports 10-16996 and 10-17600 (in Exhibit D), and offense reports 10-14301 and 10-20077 (in Exhibit E) is protected by section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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 established. *Id.* at 681-82. 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. 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, we find that the basic information we have marked in offense reports 10-15893 (in Exhibit C) and 10-20077 (in Exhibit E) is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the basic information we have marked in offense reports 10-15893 and 10-20077 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The common-law right to privacy, however, is a personal right that lapses at death and, therefore, does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death); Attorney General Opinions JM-229 (1984), H-917 (1976). Offense report 10-16996 relates to a deceased individual; therefore, the basic information within the report is not confidential under common-law privacy and the sheriff may not withhold it under section 552.101 in conjunction with common-law privacy. Moreover, you have failed to explain how the basic information in offense reports 10-17600 (in Exhibit D) and 10-14301 (in Exhibit E) is highly intimate or embarrassing and not a matter of legitimate public interest. Accordingly, we determine the sheriff may not withhold the basic information in offense reports 10-17600 and 10-14301 under section 552.101 in conjunction with common-law privacy.

We note offense report 10-17207 (in Exhibit E), contains Texas motor vehicle record information subject to section 552.130 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). Upon review, we find portions of offense report 10-17207 consist of Texas driver's license numbers. Thus, the Texas driver's license numbers, which we have marked, must be withheld from the requestor under section 552.130 of the Government Code.⁶ The remaining information within offense report 10-17207 must be released to the requestor.

In summary: (1) the sheriff must withhold offense report 10-22320 (in Exhibit C) and offense reports 10-15325, 10-18381, and 10-19961 (in Exhibit D) in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the sheriff must withhold offense report 10-19450 (in Exhibit E) in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) with the exception of basic information, the sheriff may withhold offense

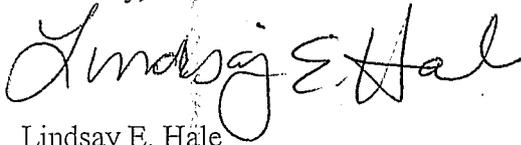
⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

reports 10-15169, 10-15785, 10-17095, 10-17964, 10-18463, 10-20058, 10-20146, 10-20244, 10-20996, 10-21163, 10-21429, 10-22404, 10-22417, and 10-23226 (in Exhibit C), offense reports 10-14653, 10-16227, 10-16328, 10-16996, 10-20575, 10-21389, and 10-21896 (in Exhibit D), and offense reports 10-15333, 10-16523, 10-17381, 10-20175, 10-20190, 10-21662, 10-21672, 10-21779, and 10-23135 (in Exhibit E) under section 552.108(a)(1) of the Government Code; (4) with the exception of basic information, the sheriff may withhold offense reports 10-15893, 10-16569, 10-17882, 10-18846, 10-19297, 10-19692, and 10-23691 (in Exhibit C), offense reports 10-17600 and 10-18279 (in Exhibit D), and offense reports 10-14301, 10-14446, 10-15213, 10-16399, 10-20077, 10-22242, 10-22531, and 10-23329 (in Exhibit E) under section 552.108(a)(2) of the Government Code; (5) the sheriff must withhold the information we have marked in offense reports 10-15893 (in Exhibit C) and 10-20077 (in Exhibit E) under section 552.101 of the Government Code in conjunction with-common law privacy; and (6) the sheriff must withhold the Texas driver's license information we have marked in offense report 10-17207 (in Exhibit E) under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 402158

Enc. Submitted documents

c: Requestor
(w/o enclosures)