



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

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

OR2010-19236

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# 403543.

The Fort Bend County Sheriff's Office (the "sheriff") received five requests from the same requestor for specified categories of information pertaining to three named individuals. You claim that 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 information, part of which is a representative sample.¹

Initially, we note the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-15602 (2010). In Open Records Letter No. 2010-15602, we concluded, in part, the sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and with the exception of basic information, the sheriff may withhold some of the submitted information under section 552.108(a)(1) of the Government Code. We have no indication that the law, facts,

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.

and circumstances on which this prior ruling was based have changed. Accordingly, to the extent the information at issue in the current request is identical to the information previously requested and ruled upon by this office, we conclude the sheriff must continue to rely on this ruling as a previous determination and withhold or release the information in accordance with Open Records Letter No. 2010-15602. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2010-15602, we will address your arguments against disclosure.

Section 552.101 of the Government Code exempts 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 section 261.201(a) of the Family Code, which provides as follows:

(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, and 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). Upon review, we find report number 98-5347 was used or developed in an investigation conducted under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “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). You do not indicate the sheriff has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude report number 98-5347 is confidential pursuant to section 261.201(a), and the sheriff must withhold it in its entirety under section 552.101.² *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

²As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert release of the remaining information would interfere with a pending prosecution. Although some of the remaining information pertains to closed cases, you explain the Fort Bend County District Attorney’s Office has advised the remaining information pertains to a case that is active in the court and any of the remaining information may be used at the trial. Based on these representations and our review of the remaining information, we conclude section 552.108(a)(1) is applicable in this instance. *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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 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*). Therefore, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1).³

In summary, to the extent the information at issue in the current request is identical to the information previously requested and ruled upon by this office, we conclude the sheriff must withhold or release the information in accordance with Open Records Letter No. 2010-15602. The sheriff must withhold report number 98-5347 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

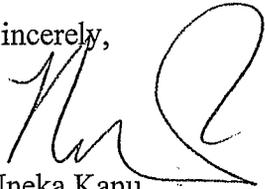
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³As our ruling is dispositive for this information, we do not address your remaining arguments against its release.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written in a cursive style.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/tf

Ref: ID# 403543

Enc. Submitted documents

c: Requestor
(w/o enclosures)