



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2011

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2011-01663

Dear Mr. Daugherty:

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# 407792 (C. A. File No. 10GEN2637).

The Harris County Constable's Office, Precinct Five, (the "county") received a request for reports created as a result of sheriffs going to three specified addresses since 2005. You state the county is providing some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 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."¹ 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)

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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1), (l)(2). Upon review, we find report number 08-87744 was developed in an investigation by the county of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261). Therefore, we find this report is within the

scope of section 261.201 of the Family Code. However, the report also reflects the requestor in this instance is the mother of two of the child victims listed in the report, and is not alleged to have committed the alleged abuse. Consequently, this report may not be withheld from this requestor in its entirety based on section 261.201(a). Section 261.201(1)(2) states, however, any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, because you also assert the report is excepted under section 552.108 of the Government Code, we will address your argument under that exception.

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 all three submitted reports pertain to open and ongoing investigations. Based on this representation and our review, we find section 552.108(a)(1) is applicable to report number 08-87744. *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). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identifying information of the complainants. *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*). However, we note one of the complainants is a child victim who is not the requestor’s child. Section 261.201(1)(1) of the Family Code provides that the identifying information of a child victim other than the requestor’s child is confidential. Thus, with the exception of basic information, the county may withhold report number 08-87744 under section 552.108(a)(1) of the Government Code. In releasing basic information, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1).

You also raise section 552.108 of the Government Code for report numbers 07-95296 and 07-86575. However, the events that gave rise to report number 07-95296 occurred on September 1, 2007. The longest possible statute of limitations for the offense described in this report is two years. *See* Pen. Code § 30.04(d) (burglary of motor vehicle is Class A misdemeanor); Crim. Proc. Code art. 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward). Additionally, the events that gave rise to report number 07-86575 occurred on August 11, 2007. The longest possible statute of limitations

for the offense described in this report is also two years. *See* Pen. Code § 42.07(c) (harassment is Class A or B misdemeanor); Crim. Proc. Code art. 12.02(a). With regard to these two reports, you have neither informed this office any criminal charges were filed within the limitations period nor explained how release of the information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has run. Thus, we find the county has failed to demonstrate the applicability of section 552.108(a)(1) to report numbers 07-95296 and 07-86575, and they may not be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own Texas driver's license number under section 552.023 of the Government Code and the county may not withhold it from her under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). Upon review, we have marked the information in report numbers 07-95296 and 07-86575 that is subject to section 552.130. The county must withhold this information under section 552.130 of the Government Code.²

In summary, with the exception of basic information, the county may withhold report number 08-87744 under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 08-87744, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code.³ The county must withhold the information we marked in report numbers 07-95296 and 07-86575 under section 552.130 of the Government Code. The remaining portions of report numbers 07-95296 and 07-86575 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.

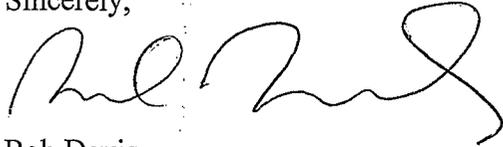
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and license plate number under section 552.130, without the necessity of requesting an attorney general decision.

³Because this requestor has a special right of access to basic information that would ordinarily be confidential under section 261.201 of the Family Code, the county must again seek a decision from this office if it receives another request for the same information from a different requestor.

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 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 407792

Enc. Submitted documents

c: Requestor
(w/o enclosures)