



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

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

OR2011-01984

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# 408595.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all police reports pertaining to a specified address from January 2008 to the date of the request. You state the sheriff released some information to the requestor. You claim the submitted information 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.¹

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 261.201(a) of the Family Code, which provides:

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.

(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). Upon review, we agree report number 10-12113 and related call slip consist of information used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (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). As you do not state the sheriff has adopted a rule that governs the release of this type of information, we assume none exists. Given that assumption, we conclude report number 10-12113 and related call slip are confidential under section 261.201(a), and the sheriff must withhold them in their entirety under section 552.101 on that basis.

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 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 state report number 10-16854 and related call slip are currently pending with the Fort Bend County District Attorney’s Office and report number 09-25556 and related call slips relate to a currently pending criminal investigation being conducted by the sheriff. Based on your representations and our review of the information at issue, we conclude 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. 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, section 552.108(a)(1) is applicable to report numbers 10-16854 and 09-25556 and related call slips.

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). You state report numbers 10-17204, 10-255, and 09-323 and related call slips relate to closed criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(2) is applicable to report numbers 10-17204, 10-255, and 09-323 and related call slips.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense but does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold report numbers 10-16854 and 09-25556 and related call slips under section 552.108(a)(1) of the Government Code and report numbers 10-17204, 10-255, and 09-323 and related call slips under section 552.108(a)(2) of the Government Code.² However, we will address your remaining argument against disclosure of the basic information.

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.

Upon review, we find the offense charged and narrative portions of the basic information in report numbers 10-17204 and 09-323, which we have marked, contain highly intimate or embarrassing information that is of no legitimate public concern.¹ Therefore, in releasing basic information, the sheriff must withhold the basic information we have marked in report numbers 10-17204 and 09-323 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

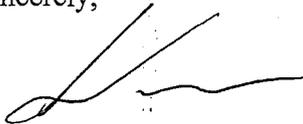
²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure of portions of this information.

In summary, the sheriff must withhold report number 10-12113 and its related call slip under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Except for basic information, the sheriff may withhold report numbers 10-16854 and 09-25556 and related call slips under section 552.108(a)(1) of the Government Code and report numbers 10-17204, 10-12113, 10-255, and 09-323 and related call slips under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 408595

Enc. Submitted documents

c: Requestor
(w/o enclosures)