



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 9, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-06414

Dear Mr. Walker:

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# 416958 (Montgomery County ORR #2011-0906).

The Montgomery County Sheriff's Office (the "sheriff") received a request for a specified report. You state the sheriff will redact a Texas driver's license number under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ We also understand the sheriff will redact a social security number under section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information is subject to section 261.201 of the Family Code.³ Section 552.101 of the Government Code excepts from disclosure "information considered

¹This office issued Open Records Decision No. 684, 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.

²Although you state the sheriff will redact the social security number you have marked pursuant to Open Records Decision No. 684, we note that decision does not encompass social security numbers. *See* ORD 684. However, 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 of the Family Code, which provides:

(a) [T]he 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). Because the submitted report pertains to an investigation of alleged or suspected child abuse or neglect, the information is within the scope of section 261.201 of the Family Code. *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) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). In this instance, however, we note the requestor is the mother of the child victim listed in the information at issue and is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). Thus, the sheriff may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the sheriff must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your argument under section 552.108 of the Government Code.

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 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 the submitted report relates to an active criminal investigation. Based upon your representation and our review, we conclude that release of the information at issue 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 the information at issue.

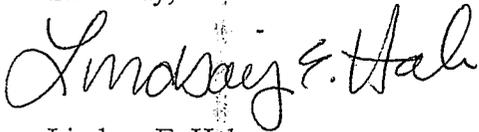
As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense and an identification and description of the complainant. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). However, in releasing basic information, section 261.201(l)(3) of the Family Code requires the sheriff to withhold the reporting party’s identifying information, which we have marked. Thus, with the exception of the basic information, the sheriff may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, with the exception of basic information, the sheriff may withhold the information at issue under section 552.108(a)(1) of the Government Code.⁴ However, in releasing basic information, the sheriff must withhold the reporting party's identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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, 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# 416958

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴This requestor has a special right of access to the basic information being released under section 261.201(k) of the Family Code and to her own driver's license number and social security number under section 552.023 of the Government Code. See Gov't Code §§ 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests), .130; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff must again seek a decision from this office.