



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

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

OR2011-09807

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# 423423.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all records from a specified period of time that pertain to a specified address. You claim the submitted incident reports are 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.

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 section 261.201, which provides in relevant part:

(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

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Incident report 10-2868 reveals that it was used or developed in the sheriff's investigation of the alleged abuse of a nine-year-old child. *See id.* §§ 261.001(1)(C) (definition of child abuse includes "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child"), 101.003(a) (defining "child" as person under eighteen years of age who is not and has not been married and who has not had disabilities of minority removed for general purposes). Accordingly, we find this incident report is subject to section 261.201. You have not indicated the sheriff has adopted a rule that governs the release of the incident report in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude incident report 10-2868 is confidential under section 261.201. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, incident report 10-2868 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You raise section 552.108(a)(2) of the Government Code for incident reports 10-5079 and 10-15630. This section 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The sheriff states incident reports 10-5079 and 10-15630 pertain to investigations that did not result in conviction or deferred prosecution. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to incident reports 10-5079 and 10-15630.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See Open Records Decision No. 127 (1976)* (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold incident reports 10-5079 and 10-15630 under section 552.108(a)(2) of the Government Code.¹

¹As our ruling for this information is dispositive, we need not address your remaining argument against disclosure.

In summary, incident report 10-2868 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the sheriff may withhold incident reports 10-5079 and 10-15630 under section 552.108(a)(2) of the Government Code.²

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 423423

Enc. . Submitted documents

c: Requestor
(w/o enclosures)

²We note basic information includes the arrested person's social security number. 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. Gov't Code § 552.147(b). The requestor has a right, however, to her own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).