



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-12394

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# 429019.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information involving the requestor, another named individual, and a specified address. We understand some of the requested information has been released. You claim 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 information you submitted.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 exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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:

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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; and

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

Fam. Code § 261.201(a), (k)-(l). You contend report number 11-12700 is confidential under section 261.201. We find the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a)(2). *See id.* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003 (defining “child” for purposes of Fam. Code title 5). In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse, and the requestor is not accused of committing the abuse.

Therefore, the sheriff may not withhold report number 11-12700 from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). We have marked the information the sheriff must withhold under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l) further provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will address your claims under section 552.108 of the Government Code for both of the submitted reports.

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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only to information related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. Although you state report number 11-12700 is related to a closed case, the submitted letter from the sheriff’s office states the case was referred to a justice of the peace court. Because of the referral to a justice of the peace court, we find you have not sufficiently demonstrated report number 11-12700 is related to a closed case that did not result in a conviction or a deferred adjudication. We therefore conclude the sheriff may not withhold the remaining information in report number 11-12700 under section 552.108(a)(2) of the Government Code.

You also claim section 552.108(a)(1) of the Government Code, which 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). You state report number 11-13070 is related to a pending criminal case. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to report number 11-13070. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note 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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, except for basic information, the sheriff may withhold report number 11-13070 under section 552.108(a)(1) of the Government Code.

Lastly, we note report number 11-12700 contains information protected by section 552.130 of the Government Code. This section excepts from disclosure information related to a

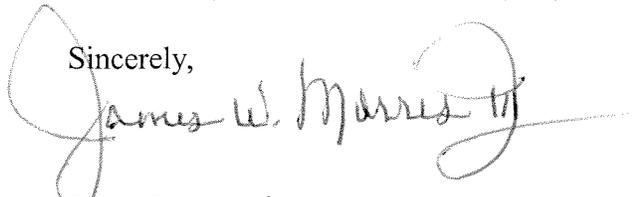
motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The sheriff must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

In summary, the sheriff (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (2) may withhold report number 11-13070 under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c); and (3) must withhold the marked driver's license information in report number 11-12700 under section 552.130 of the Government Code. The sheriff must release the rest of the submitted information.³

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

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

³We note the requestor has a right of access in this instance to information the sheriff would be required to withhold from the general public. Should the sheriff receive another request for this same information from a different requestor, the sheriff should resubmit this information and request another ruling. *See* Gov't Code §§ 552.301(a), .302.

Ref: ID# 429019

Enc: Submitted documents

c: Requestor
(w/o enclosures)