



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

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

OR2011-14882

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# 432888.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information related to incident report numbers 08-31557 and 10-33303. You claim that the requested 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. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides as follows:

(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:

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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 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:

...

(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)(2)-(3). We find report number 08-31557 was used or developed in an investigation of alleged or suspected child neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(4) (defining “neglect” for purposes of Fam. Code ch. 261). Thus, report number 08-31557 is generally confidential under section 261.201 of the Family Code. However, the requestor is a parent of the child victim, and he is not alleged to have committed the alleged or suspected neglect. Thus, in this instance, the sheriff may not use section 261.201(a) to withhold report number 08-31557 from this requestor. Fam. Code § 261.201(k). We note section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Furthermore, section 261.201(l)(2) states 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, we will consider your remaining arguments against disclosure for report number 08-31557, as well as for report number 10-33303.

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). 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). You state incident report numbers 08-31557 and 10-33303 concern criminal investigations that did not result in convictions or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to these reports.

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). Basic information refers to the information held to be public in *Houston Chronicle Publ’g 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), and includes the identity of the complainant. We further note basic information does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff may withhold incident report numbers 08-31557 and 10-33303 under section 552.108(a)(2) of the Government Code.² In this instance, however, the complainant in report number 08-31557 is also the reporting party for purposes of section 261.201. Thus, in releasing basic information for incident report number 08-31557, the sheriff must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining basic information must be released to the requestor.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,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

³Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the sheriff 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 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 432888

Enc. Submitted documents

c: Requestor
(w/o enclosures)