



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
Ellis County Courts Building
109 S. Jackson
Waxahachie, Texas 75165

OR2011-16309

Dear Ms. Montgomery-Moran:

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# 435428.

The Ellis County Sheriff's Office (the "sheriff") received a request for a specified report. You state you have made some information available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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 information made confidential by other statutes, such as section 261.201 of the Family Code which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). The submitted information pertains to an accidental shooting. Although the submitted information reflects information concerning this case was sent to Child Protective Services, you have failed to demonstrate the information at issue was used or developed in an investigation under chapter 261. Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, you have failed to demonstrate the submitted information is confidential under section 261.201 of the Family Code, and the sheriff may not withhold it under section 552.101 of the Government Code on such basis. Accordingly, we will consider your remaining arguments for the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the information you have marked relates to a closed investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

Section 552.130 of the Government Code 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. 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(a)(1)). The sheriff must withhold the driver’s license numbers you have marked under section 552.130 of the Government Code.

We note you raise section 552.147 of the Government Code, which excepts from required disclosure the social security numbers of living persons. Gov’t Code § 552.147. However, upon review, we find the submitted information does not contain any social security numbers subject to section 552.147. Accordingly, none of the submitted information may be withheld on that basis.

In summary, the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the driver’s

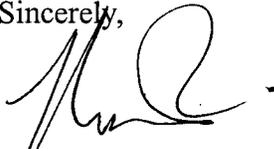
¹As our ruling is dispositive, we do not address your remaining argument against disclosure under section 552.108(b)(2) of the Government Code.

license numbers you have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 435428

Enc. Submitted documents

cc: Requestor
(w/o enclosures)