



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2011

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

OR2011-19223

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# 440736.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all calls and reports for a specified address and location during a specified time period. You claim the submitted 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 . . . 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.

Id. § 261.201(a), (k)-(l). You assert that offense report numbers 07-26784, 08-1673, and 08-24657 are confidential under section 261.201 of the Family Code. Upon review, we agree these reports were used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of

section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also 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). In this instance, with regard to offense report numbers 07-26784 and 08-1673, the requestor is a parent of the child victim listed in the report, and the requestor is accused of committing the alleged neglect. As such, offense report numbers 07-26784 and 08-1673 may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k). Therefore, we conclude offense report numbers 07-26784 and 08-1673 are confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). With regard to offense report number 08-24657, however, the requestor is a parent of the child victim listed in the report, and is not accused of committing the alleged abuse. Accordingly, offense report number 08-24657 may not be withheld from the requestor under section 261.201(a). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states 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). You assert that offense report number 08-24657 is excepted from disclosure under section 552.108 of the Government Code in its entirety, and that portions of this report are excepted under common-law privacy. Therefore, we will address these arguments against release of offense report number 08-24657, as well as your arguments for the remaining information.

Section 552.108(a)(1) 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). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state offense report numbers 10-15464 and 10-28703 relate to pending criminal investigations. You also state release of the information at issue would interfere with law enforcement or prosecution. Based on your representations and our review, we conclude release of offense report numbers 10-15464 and 10-28703 would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to this information. *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.*, 536 S.W.2d 559 (Tex. 1976).

You assert that the remaining submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that offense report numbers 07-3924, 07-24599, 08-23539, 08-24155, 08-24657, 10-5097, 10-15688, 10-19414, 10-24099, 10-30987, 10-31423, and 11-6148 pertain to closed investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we find section 552.108(a)(2) is applicable to these offense reports.

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*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information under section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff may withhold offense report numbers 10-15464 and 10-28703 under section 552.108(a)(1) of the Government Code and offense report numbers 07-3924, 07-24599, 08-23539, 08-24155, 08-24657, 10-5097, 10-15688, 10-19414, 10-24099, 10-30987, 10-31423, and 11-6148 under section 552.108(a)(2) of the Government Code.³ With regard to offense report number 08-24657, we note the complainant in this report is also the reporting party for purposes of section 261.201 of the Family Code. Although the identity of the complainant is included in basic information, section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *See* Fam. Code § 261.201(l)(3). Therefore, in releasing basic information from offense report number 08-24657, the sheriff must withhold the types of information that identify the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

Finally, we also note your argument that report number 08-24657 contains information subject to common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review of the basic information in offense report number 08-24657 that may not be withheld under section 552.108(a)(2), we agree that a portion of this information is subject to common-law privacy. However, we also

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

find that the requestor has a right of access to this private information under section 552.023 of the Government Code, and thus, it may not be withheld from him on this basis. *See* Gov't Code § 552.023 (providing in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”).

In summary, the sheriff must withhold offense report numbers 07-26784 and 08-1673 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the sheriff may withhold offense report numbers 10-15464 and 10-28703 under section 552.108(a)(1) of the Government Code, and offense report numbers 07-3924, 07-24599, 08-23539, 08-24155, 08-24657, 10-5097, 10-15688, 10-19414, 10-24099, 10-30987, 10-31423, and 11-6148 under section 552.108(a)(2) of the Government Code. In releasing basic information from offense report number 08-24657, the sheriff must withhold the types of information that identify the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.⁴

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ag

⁴We note that the requestor has a right of access to certain information in report number 08-24657. *See* Family Code § 261.201(k). Should the sheriff receive another request for this information from a different requestor, it should again seek a ruling from this office.

Ref: ID# 440736

Enc. Submitted documents

c: Requestor
(w/o enclosures)