



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2012

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

OR2012-01341

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# 443400.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for incident reports and calls for service pertaining to a specified address during a specified time period. You indicate some of the requested information has been released. 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 information, a portion of which consists of a representative sample.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 section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

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

(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.

...

(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:

...

(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). You state some of the submitted information was used in an investigation of alleged child abuse conducted by the sheriff under chapter 261 of the Family Code. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 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); *see also id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). Upon review, we find incident report number 09-9546 and its related materials and incident report number 10-20099 are subject to chapter 261 of the Family Code. In this instance, the requestor is a parent of the child victim listed in both reports. We note the requestor is alleged to have committed the suspected abuse at issue in incident report number 09-9546 and its related materials. Thus, the requestor does not have a right of access to incident report number 09-9546 and its related materials under section 261.201(k). *See* Fam. Code § 261.201(k). Therefore, the sheriff must withhold incident report number 09-9546 and its related materials under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The requestor is not alleged to have committed the abuse in incident report number 10-20099. Thus, pursuant to section 261.201(k), incident report number 10-20099 may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(1)(3). Further, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your arguments under section 552.108 of the Government Code for incident report number 10-20099, as well as for the remaining submitted reports.

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 . . . 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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation demonstrating, incident report numbers 10-27818 and 11-15358 pertain to investigations and prosecutions that are currently pending. Based on your representation, we conclude the release of incident report numbers 10-27818 and 11-15358 would interfere with the detection, investigation, or prosecution of crime. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to incident report numbers 10-27818 and 11-15358.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report numbers 10-20099 and 11-21165 pertain to concluded investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to incident report numbers 10-20099 and 11-21165.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity and description of the complainant. *See* ORD 127 at 3-4. However, the basic information does not include Texas motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic information, the sheriff may withhold incident report numbers 10-27818 and 11-15358 under section 552.108(a)(1) of the Government Code and may withhold incident report numbers 10-20099 and 11-21165 under section 552.108(a)(2) of the Government Code. As noted above, section 261.201(1)(3) states the identity of the reporting party shall be withheld from disclosure. Thus, in releasing the basic information pertaining to incident report number 10-20099, the sheriff must withhold the identity of 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.

In summary, the sheriff must withhold incident report number 09-9546 and its related materials under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the sheriff may withhold incident report numbers 10-27818 and 11-15358 under section 552.108(a)(1) of the Government Code and may withhold incident report numbers 10-20099 and 11-21165 under section 552.108(a)(2) of the Government Code. In releasing the basic information pertaining to incident report number 10-20099, the sheriff must withhold the identity of 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. The remaining basic 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,

A handwritten signature in cursive script that reads "Claire Morris Sloan". The signature is written in dark ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 443400

Enc. Submitted documents

c: Requestor
(w/o enclosures)