



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2012

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

OR2012-03355

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# 447871.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified address. You claim 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code 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

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.

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.

Fam. Code § 261.201(a), (k). You assert report numbers 11-15126, 10-17281, 10-10706, 07-24636, and 04-3160 were used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find these reports are within the scope of section 261.201(a). Although the requestor is a parent of the child victims listed in report numbers 11-15126, 10-17281, 10-10706, and 04-3160, these reports also reflect the requestor was suspected of committing the alleged or suspected abuse. Therefore, we determine the requestor does not have a right of access to these reports under section 261.201(k). *See id.* § 261.201(k). You also do not indicate the sheriff’s office has adopted a rule that governs the release of the type of information at issue in report number 07-24636. Therefore, we assume no such rule exists. Accordingly, we conclude the sheriff’s office must withhold report numbers 11-15126, 10-17281, 10-10706, 07-24636, and 04-3160 under section 552.101 in conjunction with

section 261.201 of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. The relevant language of section 58.007 of the Family Code reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Fam. Code § 58.007(c), (e). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e).

Report number 07-6435 involves juvenile conduct occurring after September 1, 1997. See *id.* §§ 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age), 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, this report is subject to section 58.007. Although the requestor is the parent of the juvenile suspect at issue in this report, that juvenile suspect is now an

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

adult. Thus, the requestor no longer has a right of access to this report pursuant to section 58.007(e). Accordingly, the sheriff's office must withhold report number 07-6435 under section 552.101 of the Government Code in conjunction with section 58.007. Although you assert report number 11-28771 is also confidential under section 58.007, the suspect at issue in this report was under the age of ten at the time of the incident. *See id.* § 51.02(2). Therefore, section 58.007 is not applicable to this report, and the sheriff's office may not withhold it under section 552.101 on that ground.

You assert the remaining information, including report number 11-28771, is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information 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). Generally, 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.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 11-32445, 11-19917, and 11-18055 relate to pending criminal investigations and report numbers 11-10907, 10-11572, 10-11298, and 10-9608 relate to criminal prosecutions that are pending with the Fort Bend County District Attorney's Office. Based on these representations, we conclude the release of this information 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). Therefore, we agree section 552.108(a)(1) is applicable to these reports.

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 the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert the remaining reports pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

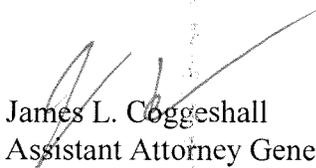
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic front-page offense and arrest information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) and (2) of the Government Code.

We conclude the following: the sheriff's office (1) must withhold report numbers 11-15126, 10-17281, 10-10706, 07-24636, and 04-3160 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) must withhold report number 07-6435 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; and (3) with the exception of basic information, which the sheriff's office must release, may withhold the remaining information under section 552.108(a)(1) and (2) of the Government Code.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 447871

Enc. Submitted documents

c: Requestor
(w/o enclosures)