



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

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

OR2012-03957

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# 448702.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for calls for service to a specified address during a specified time period. You indicate some 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 claimed exceptions 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 information made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 58.007 provides, in relevant part:

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.

(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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time the conduct occurred. *Id.* § 51.02(2). Upon review, we agree report numbers 09-10654, 09-23604, 09-32362, 10-3830, 10-4299, and 10-4422 involve a juvenile engaged in delinquent conduct or conduct indicating a need for supervision after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct”), (b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(i). Therefore, report numbers 09-10654, 09-23604, 09-32362, 10-3830, 10-4299, and 10-4422, which we have marked, are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.²

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

- (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:

²Because our ruling as to these reports is dispositive, we do not address your remaining arguments against their disclosure.

(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.

Id. § 261.201(a). Upon review, we agree report number 10-7334 was used or developed in an investigation under chapter 261. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, this report is within the scope of section 261.201. You do not indicate the sheriff’s office has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude report number 10-7334, which we have marked, is confidential under section 261.201(a) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 11-33560 pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of this report would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code generally applies to report number 11-33560.

Section 552.108(a)(2) 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

³Because our ruling as to this report is dispositive, we do not address your remaining argument against its disclosure.

of crime only in relation to an investigation that did not result in 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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 10-33840, 11-553, 11-12516, 11-13729, 11-15347, and 11-16687 pertain to cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) generally applies to these reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 536 S.W.2d at 186-88. Basic information must be released even if it does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff’s office may withhold report number 11-33560 under subsection 552.108(a)(1) and report numbers 10-33840, 11-553, 11-12516, 11-13729, 11-15347, and 11-16687 under subsection 552.108(a)(2).⁴

We understand you to argue that portions of the basic information may be protected by the common-law right to privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find none of the basic information is highly intimate or embarrassing and of no legitimate public interest. Therefore, no portion of the basic information may be withheld under section 552.101 on the basis of common-law privacy. As no further exceptions to disclosure are raised for this information, it must be released to the requestor.

In summary, the sheriff’s office must withhold report numbers 09-10654, 09-23604, 09-32362, 10-3830, 10-4299, and 10-4422, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The sheriff’s office must withhold report number 10-7334, which we have marked, under

⁴Because our ruling as to this information is dispositive, we do not address your remaining argument against its disclosure.

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold report number 11-33560 under subsection 552.108(a)(1) of the Government Code and report numbers 10-33840, 11-553, 11-12516, 11-13729, 11-15347, and 11-16687 under subsection 552.108(a)(2).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID # 448702

Enc. Submitted documents

c: Requestor
(w/o enclosures)