



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2012

Mr. Kenneth Hammack
Sheriff
Polk County Sheriff's Office
1733 North Washington
Livingston, Texas 77351

OR2012-12457

Dear Sheriff Hammack:

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# 461597.

The Polk County Sheriff's Department (the "department") received a request for records pertaining to a specified arrest. We note you have redacted driver's license numbers pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not

¹Section 552.130 of the Government Code authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from this office. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See *id.* § 552.147(b).

result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You seek to withhold the submitted information under section 552.108(a)(2) of the Government Code. However, you state the Polk County District Attorney's Office has accepted the case, which will be presented to a grand jury. We find you have provided contradictory representations regarding whether the submitted information relates to a case that has concluded in a result other than conviction or deferred adjudication. Thus, based on your conflicting representations, you have not demonstrated the applicability of section 552.108(a)(2). We therefore conclude the department may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses other statutes, such as section 552.101 encompasses information protected by other statutes, such as 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 [the Act], 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). We note a portion of the submitted information, which we have marked, was used or developed in an investigation of alleged child endangerment. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section). Therefore, this information falls within the scope of section 261.201(a). As you do not state the department has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but will ordinarily not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

Family Code. As no further exceptions to disclosure have been raised, the department must release the remaining information.

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/bhf

Ref: ID# 461597

Enc. Submitted documents

c: Requestor
(w/o enclosures)