



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

Mr. Raymond Rodriguez
Uvalde County Sheriff's Office
339 King Fisher Lane
Uvalde, Texas 78801

OR2012-13140

Dear Mr. Rodriguez:

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# 462799.

The Uvalde County Sheriff's Office (the "sheriff's office") received a request for a specified investigation.¹ We understand you to 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. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we must address the sheriff's office's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or

¹As you have not submitted the request for our review, we take our description from your brief.

sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You do not inform us, nor are we able to discern, what date the sheriff's office received the request for information. As of the date of this letter, the sheriff's office has not submitted a copy of the written request to this office for our review. Thus, we find the sheriff's office failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Federal Bureau of Investigation (the "FBI") and the Texas Department of Public Safety ("DPS") assert a law enforcement interest in the information at issue under section 552.108. Therefore, we will determine whether the sheriff's office may withhold the submitted information on behalf of the FBI and DPS under section 552.108.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code requires disclosure of "information that is also contained in a public record," unless the information is confidential under the Act or "other law." Gov't Code § 552.022(a)(17). Although you seek to withhold these documents under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects only the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed documents may not be withheld under section 552.108. However, we note sections 552.101 and 552.130 of the

Government Code may be applicable to the information subject to section 552.022(a)(17).² Because sections 552.101 and 552.130 make information confidential under the Act, we will consider the applicability of these exceptions to the court-filed documents subject to section 552.022(a)(17). We will also consider the applicability of section 552.108 to the information not subject to section 552.022(a)(17).

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, such as section 261.201 of the Family Code. Section 261.201(a) provides:

(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 some of the submitted information, including a court-filed document subject to section 552.022(a)(17) of the Government Code, consists of information used or developed in an investigation of alleged child abuse, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of aggravated sexual assault under section 22.021 of the Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of Penal Code § 22.021). As you do not indicate the sheriff’s office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we find the sheriff’s office must withhold the information at issue, which we have marked, 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) (addressing predecessor statute).

We note the remaining information subject to section 552.022(a)(17) contains motor vehicle information subject to section 552.130 of the Government Code. Section 552.130(a)(2) of provides that information relating to a motor vehicle title or registration issued by a Texas

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

agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). We find the sheriff's office must withhold the information we have marked in the remaining information subject to section 552.022(a)(17) under section 552.130 of the Government Code. As no further exceptions to disclosure have been raised for the rest of the information subject to section 552.022(a)(17) of the Government Code, it must be released.

Next, we address your claim under section 552.108 of the Government Code for the information not subject to section 552.022(a)(17). Section 552.108 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[.]" *Id.* § 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the FBI and DPS wish to withhold the information at issue because it relates to a pending criminal investigation and its release would interfere with the investigation of the crime. In correspondence to this office, the requestor asserts the information does not pertain to a pending criminal investigation. Whether the information pertains to a pending criminal investigation is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).* Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or on those facts that are discernible from the documents submitted for our inspection. *See ORD 552 at 4.* Therefore, based on the representations made by the sheriff's office and the FBI and DPS, we conclude release of the remaining 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). Thus, we find section 552.108(a)(1) is applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See 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; see also Open Records Decision No. 127 at 3–4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the sheriff's office may withhold the remaining information on behalf of the FBI and DPS under section 552.108(a)(1) of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and under section 552.130 of the Government Code. The sheriff's office must release the remaining information subject to section 552.022(a)(17) of the Government Code. With the exception of basic information, the sheriff's office may withhold the remaining

information on behalf of the FBI and DPS under section 552.108(a)(1) 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



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 462799

Enc. Submitted documents

c: Requestor
(w/o enclosures)