



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2012

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2012-16473

Dear Ms. Lentz:

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# 468173.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for specified reports involving named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically consents to the redaction of driver's license numbers, license plate numbers, vehicle identification numbers, and social security numbers. Thus, this information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office is not required to release that information in response to the request.

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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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 find the information we have marked was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); .001(4) (defining “neglect” for purposes of chapter 261 of the Family Code); 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), 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age); *see also id.* § 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 disabilities of minority removed for general purposes). As you do not indicate that the sheriff’s office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude the information we have marked is confidential under section 261.201(a). Accordingly, the marked information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ However, we find you have failed to demonstrate how any of the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a) 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: (1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 2012-02-00879 relates to a pending criminal prosecution by the Williamson County Attorney’s Office (the “county attorney’s office”). You further state the county attorney’s office states release of this information would interfere with the pending

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information.

criminal prosecution. Based upon this representation, we find release of report number 2012-02-00879 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) of the Government Code is generally applicable to report number 2012-02-00879.

Section 552.108(a)(2) of the Government Code 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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report numbers 2012-03-00831 and 2009-02-10159 pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) of the Government Code is generally applicable to report numbers 2012-03-00831 and 2009-02-10159.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page 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). Thus, with the exception of basic information, the sheriff's office may withhold report number 2012-02-00879 under section 552.108(a)(1) and report numbers 2012-03-00831 and 2009-02-10159 under section 552.108(a)(2).

We note a portion of the basic information for report number report number 2009-02-10159 is subject to section 552.101 of the Government Code in conjunction with common-law privacy, which, 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). This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find some of the basic information in report number 2012-03-00831 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office must withhold the

complainant's identifying information in report number 2009-02-10159 from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. With the exception of basic information, the sheriff's office may withhold report number 2012-02-00879 under section 552.108(a)(1) of the Government Code and report numbers 2012-03-00831 and 2009-02-10159 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the sheriff's office must withhold the identifying information of the complainant in report number 2009-02-10159 under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 468173

Enc. Submitted documents

c: Requestor
(w/o enclosures)