



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2013

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

OR2013-01871

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# 478997.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for (1) information pertaining to a specified address during a specified time period; (2) all records regarding the requestor's daughter; and (3) all records regarding a named individual. You state the sheriff's office will release some information. You claim 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 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. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family code, which provides in relevant part:

¹We assume the "representative sample" of information 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 those 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.

...

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j). Under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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 of the conduct. *See id.* § 51.02(2). Upon review, we find the submitted information pertaining to reports 10-33875, 11-7114, and 12-6979 consists of law enforcement records of juveniles engaged in delinquent conduct or conduct indicating

a need for supervision on or after September 1, 1997. Therefore, we find the submitted information relating to reports 10-33875, 11-7114, and 12-6979 is generally confidential under section 58.007(c). We note, however, that the requestor is a parent of one of the juvenile suspects listed in the information at issue. As such, the requestor has a right of access under section 58.007(e) to law enforcement records concerning his child. *Id.* § 58.007(e). However, section 58.007(j)(1) provides that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Additionally, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure of the submitted information relating to reports 10-33875, 11-7114, and 12-6979.

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 [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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (l)(2). We note the submitted information relating to reports 11-7114, 11-32476, 11-33204, and 12-6978 was used or developed by the sheriff's office in investigations under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *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 the disabilities of minority removed for general purposes). Although the requestor is a parent of the child victim listed in these reports, the requestor is alleged to have committed the alleged child abuse or neglect in reports 11-7114, 11-32476, and 12-6978. Thus, the requestor does not have a right of access to the submitted information relating to reports 11-7114, 11-32476, and 12-6978 under section 261.201(k). *See id.* § 261.201(k). Accordingly, the sheriff's office must withhold the submitted information relating to reports 11-7114, 11-32476, and 12-6978 from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.²

However, we note the requestor is not accused of committing the alleged or suspected abuse or neglect in report 11-33204. Accordingly, the sheriff's office may not withhold from this requestor the submitted information relating to report 11-33204 that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your remaining arguments against disclosure of the submitted information relating to report 11-33204.

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. *See 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the submitted information relating to reports 96-773, 10-33875, 11-33204, and 12-6979 pertains to concluded criminal investigations that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the submitted information relating to reports 96-773, 10-33875, 11-33204, and 12-6979.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

We note, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes an identification and description of the complainant. Thus, with the exception of basic information, the sheriff’s office may withhold the submitted information relating to reports 96-773, 10-33875, 11-33204, and 12-6979 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information for report 10-33875, the sheriff’s office must redact the identifying information of any juvenile suspects, offenders, victims, or witnesses who are not the requestor’s child pursuant to section 552.101 of the Government Code on conjunction with section 58.007(j)(1) of the Family Code.

Lastly, we understand the sheriff’s office to claim the basic information in report 11-33204 is protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found common-law privacy generally protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Although the sheriff’s office would ordinarily be required to withhold some of the basic information in report 11-33204 pertaining to the child victim, as previously noted, the requestor is a parent of the child victim in report 11-33204. As such, the requestor has a right of access under section 552.023 of the Government Code to information the sheriff’s office would be required to withhold from the public to protect his child’s privacy. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, we find you have failed to demonstrate any other portion of the basic information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff’s office may not withhold any of the basic information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff’s office must withhold the submitted information relating to reports 11-7114, 11-32476, and 12-6978 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. With the exception of basic information, the sheriff’s office may withhold the submitted information relating to reports 96-773, 10-33875, 11-33204, and 12-6979 under section 552.108(a)(2) of the

Government Code. However, in releasing the basic information for report 10-33875, the sheriff's office must redact the identifying information of any juvenile suspects, offenders, victims, or witnesses who are not the requestor's child pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The sheriff's office must release the remaining information.³

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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 478997

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As noted, the requestor in this instance has a special right of access under section 552.023 of the Government Code and sections 58.007(e) and 261.201(k) of the Family Code to some of the information being released. Accordingly, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again request an opinion from this office.