



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 9, 2013

Ms. Jo Spurger  
Administrative Assistant  
Somervell County Sheriff's Office  
750 East Gibbs Boulevard  
Glen Rose, Texas 76043

OR2013-05615

Dear Ms. Spurger:

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# 483550.

The Somervell County Sheriff's Office (the "sheriff's office") received a request for ten categories of incident reports for a specified time period. You have released some of the requested information with redactions made pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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:

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<sup>1</sup>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. Gov't Code § 552.147(b).

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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 that the information you have marked was used or developed in an investigation of alleged or suspected child abuse 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 sexual assault and aggravated sexual assault under sections 22.011 and 22.021 of the Penal Code); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person under 17 years of age). 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 that the information you 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.<sup>3</sup>

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 claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 12000373, 12000370, 12000116, and 12000110 relate to ongoing criminal investigations. Based on your representations and our review, we find that release of incident report numbers 12000373, 12000370, 12000116, and 12000110 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to incident report numbers 12000373, 12000370, 12000116, and 12000110. *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).

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure for this 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 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 state incident report number 12000351 concerns a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to incident report number 12000351.

However, section 552.108 does not except from disclosure 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). We note basic information does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the sheriff’s office may withhold incident report numbers 12000373, 12000370, 12000116, and 12000110 under section 552.108(a)(1) of the Government Code and incident report number 12000351 under section 552.108(a)(2) of the Government Code.

You assert the basic information in incident report numbers 12000373, 12000116, and 12000110 is confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 encompasses the common-law right to 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. The type of information considered intimate and 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. *Id.* at 683.

The information at issue relates to alleged sexual assaults. In Open Records Decision No. 393 (1983), this office concluded generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld on the basis of common-law privacy. Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Thus, the sheriff's office may not withhold the entirety of the basic information for incident report numbers 12000373, 12000116, and 12000110 under section 552.101 in conjunction with common-law privacy. However, in this instance, the complainants are also the alleged sexual assault victims listed in incident report numbers 12000373, 12000116, and 12000110. Although portions of incident report number 12000110 use a pseudonym for the alleged sexual assault victim, we note other portions of this report use the alleged sexual assault victim's real name and contain other identifying information of the alleged sexual assault victim. Therefore, in releasing basic information for these reports, the sheriff's office must withhold the victims' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we conclude the motor vehicle record information you have marked, as well as the additional motor vehicle record information we have marked, must be withheld under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information you 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, which must be released, the sheriff's office may withhold incident report numbers 12000373, 12000370, 12000116, and 12000110 under section 552.108(a)(1) of the Government Code and incident report number 12000351 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information for incident report numbers 12000373, 12000116, and 12000110, the sheriff's office must withhold the identifying information of the victims, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you have marked, in addition to the motor vehicle record information we have marked, in the remaining information under section 552.130 of the Government Code. The remaining information must be released.

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](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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 483550

Enc. Submitted documents

c: Requestor  
(w/o enclosures)