



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2013

Ms. Cheryl Elliot Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-07248

Dear Ms. Thornton:

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# 485972 (CAO File No. 13PIA0077).

The Harris County Constable's Office, Precinct 3 (the "constable's office"), received a request for information related to calls for service at a specified address. You claim the requested 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)(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 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 generally assert the requested information relates to "an open and ongoing criminal investigation," and release of "information relating to the case" would interfere with "the ability of the State to properly investigate this matter which is pending and would also unduly interfere with the judicial enforcement of the penal statutes of Texas." You also generally

claim “[t]he requested records/information . . . relate directly to [multiple] open cases/criminal prosecutions[.]” We note the submitted information consists of forty call sheets and incident reports, most of which do not list a criminal offense or name a suspect. We note the statutes of limitation for the remaining reports have expired. *See* Crim. Proc. Code arts. 12.01(4) (felony indictment for theft must be presented within five years from date of offense), 12.01(7) (all other felonies not listed must be presented within three years from date of offense), 12.02(a) (indictment or information on Class A or Class B misdemeanor may be presented within two years from date of commission of offense, and not afterward), 12.02(b) (indictment or information on Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward); *see also* Penal Code §§ 22.01(b)–(c) (assault under section 22.01 of the Penal Code is Class A, B, or C misdemeanor, or felony), 28.03(b)(1)–(3) (criminal mischief is a Class A misdemeanor if the pecuniary loss is \$500 or more, but less than \$1,500; a Class B misdemeanor if the pecuniary loss is \$50 or more, but less than \$500; and a Class C misdemeanor if the amount of pecuniary loss is less than \$50), 28.04(b) (reckless damage or destruction is Class C misdemeanor), 30.04(d) (burglary of vehicle is Class A misdemeanor or felony), 31.03 (theft is Class A, B, or C misdemeanor, or felony), 31.11(d) (tampering with identification numbers is Class A misdemeanor); Trans. Code §§ 550.021(c) (failure to stop and render aid is felony), .022(c)-(c-1) (accident involving damage to vehicle is Class B or C misdemeanor), .024(b) (striking unattended vehicle is Class B or C misdemeanor), .025(b) (striking structure, fixture, or highway landscaping is Class B or C misdemeanor). You have not informed this office any criminal charges were filed within the limitations period for these particular offenses.

Upon review, we find you have failed to explain how release of the submitted information would interfere in some way 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). Further, you have not otherwise demonstrated how release of the submitted information would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has not run. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108(a)(1), the constable’s office may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

We note some of the submitted information is excepted from public disclosure under section 552.101 of the Government Code.¹ Section 552.101 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body.

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, the information we have marked is subject to section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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), 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the constable’s office has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the constable’s office must withhold the marked information from public disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be satisfied. *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. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate and embarrassing and of no legitimate

public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the constable's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the constable's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the constable's office must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) section 552.101 of the Government Code in conjunction with common-law privacy, and (3) section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 485972

Enc. Submitted documents

c: Requestor
(w/o enclosures)