



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2013

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

OR2013-10930

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# 491739.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records, call slips, and call logs involving a specified address during a specified time period. You state the sheriff's office will release some information to the requestor. You claim 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 information.

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 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.

Fam. Code § 261.201(a), (k). Upon review, we agree report number 11-25782 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” 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). Thus, we find report number 11-25782 is within the scope of section 261.201. In this instance, the requestor is a parent of the child victim of the alleged or suspected abuse. We note, however, the requestor is alleged to have committed the abuse. Therefore, report number 11-25782 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, we find report number 11-25782 is confidential under section 261.201(a) of the Family Code and the sheriff’s office must withhold it under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in relevant part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree report number 07-8601 involves juvenile conduct indicating a need for supervision occurring after September 1, 1997. Therefore, this information is subject to section 58.007. Thus, the sheriff’s office must withhold report number 07-8601 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) provides in part the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) 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[.]

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

Gov't Code § 552.108(a)(1)-(2). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report number 11-10527 pertains to a pending criminal case. Based on this representation and our review of the information, we find release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to report number 11-10527. You state report numbers 08-22066 and 08-3188 pertain to concluded criminal investigations 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 report numbers 08-22066 and 08-3188.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *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 motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold report number 11-10527 under section 552.108(a)(1) of the Government Code and report numbers 08-22066 and 08-3188 under section 552.108(a)(2) of the Government Code.³

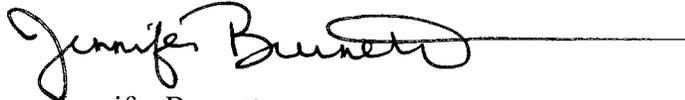
In summary, the sheriff's office must withhold report number 11-25782 under section 552.101 of the Government Code in conjunction with section 261.201 of the Government Code and report number 07-8601 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, which must be released, the sheriff's office may withhold report number 11-10527 under section 552.108(a)(1) of the Government Code and report numbers 08-22066 and 08-3188 under section 552.108(a)(2) of the Government Code.

³As our ruling for this information is dispositive, we need not address your remaining argument against its release.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 491739

Enc. Submitted documents

c: Requestor
(w/o enclosures)