



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2013

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

OR2013-18282

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# 502864.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for two specified police reports. 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 public 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 as follows:

(a) Except as provided by Section 261.203, the 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(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 . . . 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[.]

Fam. Code § 261.201(a), (k), (l)(2). You assert report number 13-18832 is confidential under section 261.201 of the Family Code. Upon review, we agree this report 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 under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 as person under 17 years of age). In this instance, the requestor is a parent of the child victim listed in the report and is not accused of committing the alleged abuse. Accordingly, report number 13-18832 may not be withheld from the requestor under section 261.201(a). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(l)(2). You assert the information at issue is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Therefore, we will address these arguments against release of report number 13-18832, as well as your arguments for the remaining 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 13-18832 pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of report number 13-18832 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 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). Therefore, section 552.108(a)(1) of the Government Code is applicable to report number 13-18832.

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). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state report number 13-13825 did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to report number 13-13825.

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). 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. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff’s office may withhold report number 13-18832 under section 552.108(a)(1) and report number 13-13825 under section 552.108(a)(2).²

We understand you to argue the basic information in report number 13-18832 is protected by section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, as

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

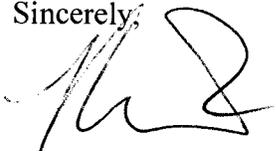
noted, the requestor is a parent of the minor with the privacy interest and thus has a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the sheriff's office may not withhold any of the basic information from this requestor under section 552.101 on the basis of common-law privacy.

In summary, with the exception of basic information, the sheriff's office may withhold report number 13-18832 under section 552.108(a)(1) of the Government Code and report number 13-13825 under section 552.108(a)(2) of the Government Code.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.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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 502864

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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