



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2014

Ms. Jo Spurger  
Administrative Assistant  
Somervell County Sheriff's Office  
P.O. Box 3268  
Glen Rose, Texas 76043

OR2014-04971

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# 517696.

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 state that you do not have information responsive to a portion of the request.<sup>1</sup> You state you have released some of the requested information to the requestor with redactions pursuant to sections 552.130 and 552.147 of the Government Code.<sup>2</sup> You claim the remaining requested 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 information.

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received or to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) 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. *Id.* § 552.147(b).

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, including section 261.201 of the Family Code, which provides in relevant part the following:

(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). Upon review, we find portions of the submitted information were used or developed in investigations 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), (4) (defining “abuse” and “neglect” for purposes of section 261.201). 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. Given that assumption, we conclude the sheriff’s office must withhold the information we have marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note that because section 261.201(a) protects all “files, reports, records, communications, audiotapes, videotapes, and working papers” relating to an investigation of alleged or suspected child abuse, the sheriff’s office must not release basic information in such cases.<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 13000177, 13000310, 13000406, 13000418, 13000201, and 13000338 relate to

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information.

ongoing criminal investigations. You explain two of the incidents are under investigation by the sheriff's office, and four are under investigation by the district attorney's office, who has requested the information at issue be withheld. Based on your representations and our review, we find that release of incident report numbers 13000177, 13000310, 13000406, 13000418, 13000201, and 13000338 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to incident report numbers 13000177, 13000310, 13000406, 13000418, 13000201, and 13000338. 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).

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 numbers 13000075, 13000184, 13000232, and 13000394 concern concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to incident report numbers 13000075, 13000184, 13000232, and 13000394.

However, as you acknowledge, 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*. See 531 S.W.2d at 186-88. Thus, with the exception of basic information, the sheriff's office may withhold incident report numbers 13000177, 13000310, 13000406, 13000418, 13000201, and 13000338 under section 552.108(a)(1) of the Government Code and incident report numbers 13000075, 13000184, 13000232, and 13000394 under section 552.108(a)(2) of the Government Code.

We understand you to argue a portion of the basic information in incident report number 13000338 is protected by section 552.101 of the Government Code in conjunction with common-law privacy. Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, because incident report number 13000338 contains information about an alleged sexual assault, certain front page offense report information is excepted from disclosure under section 552.101 of the Government Code. Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is

highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities 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). Accordingly, the sheriff's office must withhold the sexual assault victim's identifying information, which you have marked, in addition to the information we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential.<sup>4</sup> CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See Gov't Code* § 411.089(b)(1). The documents that are the subject of the instant request contain Federal Bureau of Investigation ("FBI") numbers that constitute CHRI generated by the FBI. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked in its entirety pursuant to 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 13000177, 13000310, 13000406, 13000418, 13000201, and 13000338 under section 552.108(a)(1) of the Government Code

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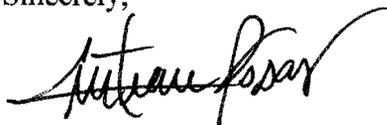
<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

and incident report numbers 13000075, 13000184, 13000232, and 13000394 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information for incident report number 13000338, the sheriff's office must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must also withhold the FBI numbers we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the motor vehicle record information we have marked 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 517696

Enc. Submitted documents

c: Requestor  
(w/o enclosures)