ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2014

Ms. Susan Fillion
Assistant County Attorney
Harris County Attorney's Office
1200 Baker Street
Houston, Texas 77002-1206

OR2014-22404

Dear Ms. Fillion:

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# 546522 (HSCO File No. 14SO600211).

The Harris County Sheriff's Office (the "sheriff's office") received a request for all calls for service for three specified addresses during a specified time period. The sheriff's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims and reviewed the submitted representative sample of information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[2] Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct

[1]We 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]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

that occurred on or after September 1, 1997, are confidential under section 58.007(c). Section 58.007 provides, in pertinent 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, 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). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). Upon review, we conclude the information we have marked consists of law enforcement records involving juvenile conduct indicating a need for supervision occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.[3]

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states the remaining information relates to concluded cases that did not result in a conviction or deferred adjudication. Based on the sheriff's office's representation, we conclude section 552.108(a)(2) is applicable to the information at issue.

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[3]As our ruling is dispositive, we need not address the sheriff's office's argument against disclosure of this information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Further, in Open Records Decision No. 649 (1996), this office concluded information contained in a computer-aided dispatch ("CAD") report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

We note some of the basic information is subject to section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 546522

Enc. Submitted documents

c: Requestor
(w/o enclosures)