



Law Enforcement Records

Tamara Smith
Assistant Attorney General
Open Records Division



Section 552.108(a)(1)

- ▶ (a) 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[.]



Tips When Asserting Section 552.108(a)(1)

- ▶ Explain how information is related to a pending criminal investigation or prosecution.
- ▶ It is a discretionary exception.
- ▶ Let the OAG know if some information is being released.
- ▶ Section 552.108(a)(1) is not applicable to information subject to sections 552.022(a)(2) through 552.022(a)(18), including court-filed documents subject to section 552.022(a)(17).



Hypothetical (Slide 1 of 6)

- ▶ In which of these situations is it appropriate to raise section 552.108(a)(1)?
 - A. After a jury returned a verdict of not guilty and the case was dismissed
 - B. After a police department finished its investigation and referred the case for prosecution
 - C. After a defendant accepted deferred adjudication
 - D. After the statute of limitations passed for an unsolved cold case



Hypothetical (Slide 2 of 6)

- ▶ In which of these situations is it appropriate to raise section 552.108(a)(1)?
 - A. After a jury returned a verdict of not guilty and the case was dismissed
 - B. After a police department finished its investigation and referred the case for prosecution
 - C. After a defendant accepted deferred adjudication
 - D. After the statute of limitations passed for an unsolved cold case



Hypothetical (Slide 3 of 6)

- ▶ A police department has an offense report, a copy of the citation, and dash camera recordings. Which can the department not withhold under section 552.108(a)(1)?
 - A. Citation
 - B. Dash Camera Recordings
 - C. Offense Report
 - D. None of the above



Hypothetical (Slide 4 of 6)

- ▶ A police department has an offense report, a copy of the citation, and dash camera recordings. Which can the department not withhold under section 552.108(a)(1)?
 - A. Citation
 - B. Dash Camera Recordings
 - C. Offense Report
 - D. None of the above



Hypothetical (Slide 5 of 6)

- ▶ Can a police department ever withhold information under section 552.108(a)(1) if it failed to comply with its deadlines under section 552.301?
 - A. Yes, if the police department objects to its release
 - B. Yes, if another governmental body objects to its release based on its own pending investigation
 - C. Yes, section 552.108(a)(1) is compelling
 - D. A and B



Hypothetical (Slide 6 of 6)

- ▶ Can a police department ever withhold information under section 552.108(a)(1) if it failed to comply with its deadlines under section 552.301?
 - A. Yes, if the police department objects to its release
 - B. Yes, if another governmental body objects to its release based on its own pending investigation
 - C. Yes, section 552.108(a)(1) is compelling
 - D. A and B



Section 552.108(c)

- ▶ Section 552.108 does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.



What is Basic Information?

- ▶ Basic information is the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*.

- ▶ Examples of basic information from Open Records Decision No. 127 (1976):
 - Detailed description of the offense
 - Arrestee's name
 - Identification and description of the complainant



What is Not Basic Information?

- ▶ Motor vehicle record information
- ▶ Dates of birth
- ▶ Victim or witness information, if the victim or witness is not the complainant
- ▶ Photographs, dash camera video recordings, or 9-1-1 audio recordings



Section 552.108(a)(1)

- ▶ Section 552.108(a)(1) may be raised by an entity that is not a law enforcement agency or prosecutor when the entity is the proper custodian of information.
 - The proper custodian must:
 - Demonstrate the information relates to a pending case of a law enforcement agency; and
 - Provide a representation from the law enforcement agency that it wishes to have the information withheld.



Section 552.108(a)(2)

(a) 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:

. . .

(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;



Tips When Asserting Section 552.108(a)(2)

- ▶ Explain how information is related to a closed criminal investigation or prosecution, and the disposition.
- ▶ It is a discretionary exception, so you can release nonconfidential portions of the information.
- ▶ Let the OAG know if some information is being released.
- ▶ “Has not” does not indicate the investigation or case is closed.



Hypothetical (Slide 1 of 2)

- ▶ If a governmental body states a case has not resulted in conviction or deferred adjudication, has the governmental body successfully raised section 552.108(a)(2)?
 - A. Yes
 - B. No



Hypothetical (Slide 2 of 2)

- ▶ If a governmental body states a case has not resulted in conviction or deferred adjudication, can the governmental body successfully claim section 552.108(a)(2)?
 - A. Yes
 - B. No



Section 552.101

- ▶ Section 552.101 protects information that is made confidential by law outside of the Act, including constitutional, statutory, and judicial decisions.
- ▶ Section 552.101 must be raised in conjunction with another law or doctrine.
- ▶ Section 552.101 should not be raised in conjunction with one of the numbered exceptions in the Act.



Section 58.008(b) of the Family Code (Slide 1 of 2)

- ▶ (b) Except as provided by Subsection (c) , law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:
 - (1) if maintained on paper or microfilm, kept separate from adult records;
 - (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.



Section 58.008(b) of the Family Code (Slide 2 of 2)

- ▶ Protects law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that occurred before, on, or after September 1, 1997.
- ▶ Section 51.02(2) of the Family Code defines a child as 10 to 16 years of age at the time the conduct occurred.
- ▶ Previously covered by sections 51.14 and 58.007(c) of the Family Code.



Section 58.008(d) of the Family Code

- ▶ (d) Law enforcement records concerning a child may be inspected or copied by:
 - (1) a juvenile justice agency, as defined by Section 58.101;
 - (2) a criminal justice agency, as defined by Section 411.082, Government Code;
 - (3) the child;
 - (4) the child's parent or guardian; or
 - (5) the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child.



Section 58.008(e) of the Family Code

- ▶ (e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:
 - (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
 - (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or any other law.



Tips When Raising Section 58.008(b) of the Family Code

- ▶ Section 58.008 only applies when a child is the suspect, arrestee, or defendant.
- ▶ The alleged offense or conduct must meet the definitions found in the Family Code.
- ▶ Transportation Code violations do not meet the requirements of section 58.008.
- ▶ Section 58.008 is a mandatory exception.
- ▶ The requestor may have a right of access.
 - Other exceptions may still be raised.



Hypothetical (Slide 1 of 2)

- ▶ Which of these incidents is subject to section 58.008(b) of the Family Code?
 - A. Parents report their 8 year-old son ran away
 - B. Police arrest a 17 year-old for underage drinking
 - C. A 16 year-old reports witnessing an assault
 - D. Police arrest a 15 year-old suspect for theft



Hypothetical (Slide 2 of 2)

- ▶ Which of these incidents is subject to section 58.008(b) of the Family Code?
 - A. Parents report their 8 year-old son ran away
 - B. Police arrest a 17 year-old for underage drinking
 - C. A 16 year-old reports witnessing an assault
 - D. Police arrest a 15 year-old suspect for theft



Section 261.201(a) of the Family Code (Slide 1 of 2)

- ▶ (a) Except as provided by Section 261.203, the following information is confidential, is not subject to the Act, and may be disclosed only for purposes consistent with the Family 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.



Section 261.201(a) of the Family Code (Slide 1 of 2)

- ▶ Abuse and neglect are defined in section 261.001 of the Family Code
- ▶ Investigation must be conducted by an agency authorized to conduct child abuse and neglect investigations.
- ▶ Section 101.003(a) defines child victim as under the age of 18 at the time of the alleged abuse or neglect.



Section 261.201(k) of the Family Code

- ▶ (k) Notwithstanding Subsection (a), an investigating agency, other than the Texas Department of Family and Protective Services or the Texas Juvenile Justice Department, 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.



Section 261.201(I) of the Family Code

- ▶ (I) 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:
 - (1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:
 - (A) the child who is the subject of the report; or
 - (B) another child of the parent, managing conservator, or other legal representative requesting the information;
 - (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and
 - (3) the identity of the person who made the report.



Section 261.201(h) of the Family Code

- ▶ (h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

- ▶ For example, daycare facilities
 - These homes and facilities can be found on the Texas Department of Family and Protective Services website.



Tips When Raising Section 261.201 of the Family Code

- ▶ Explain whether the requested information consists of a report of or was used in a child abuse or neglect investigation or contains the identity of an individual who made a report of child abuse or neglect.
- ▶ Tell us the age of the child victim.
- ▶ Section 261.201 is a mandatory exception.
- ▶ Explain whether the requestor has a right of access.
 - Other exceptions may still be raised.



Hypothetical (Slide 1 of 4)

- ▶ A sheriff's office received a request for information relating to alleged child abandonment involving 8 year old twins. The sheriff's office objects to the request by raising section 261.201. Has the sheriff's office raised this exception correctly?
 - A. Yes
 - B. No



Hypothetical (Slide 2 of 4)

- ▶ A sheriff's office received a request for information relating to alleged child abandonment involving 8 year old twins. The sheriff's office objects to the request by raising section 261.201. Has the sheriff's office raised this exception correctly?
 - A. Yes
 - B. No



Hypothetical (Slide 3 of 4)

- ▶ When may a school district withhold information under section 261.201?
 - A. When it's a report made to the Texas Department of Family and Protective Services
 - B. When the district affirmatively represents its files were used in an investigation by an authorized agency
 - C. When the district police department did the investigation
 - D. All of the above



Hypothetical (Slide 4 of 4)

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 - A. When it's a report made to the Texas Department of Family and Protective Services
 - B. When the district affirmatively represents its files were used in an investigation by an authorized agency
 - C. When the district police department did the investigation
 - D. All of the above



Common-Law Privacy

- ▶ Common-law privacy protects information that is:
 - (1) highly intimate or embarrassing, and
 - (2) not of legitimate concern to the public.



Types of Information Subject to Common-law Privacy

- ▶ Criminal History Compilation
- ▶ Attempted Suicide
- ▶ Sexual Assault
- ▶ Medical Information
- ▶ Personal Financial Information



Hypothetical (Slide 1 of 2)

- ▶ A police department has an incident report for a motor vehicle accident. The report lists insurance information pertaining to the involved vehicles. What information is subject to common-law privacy?
 - A. Insurance Carrier Name
 - B. Insurance Carrier Phone Number
 - C. Insurance Policy Expiration Date
 - D. A & B
 - E. All of the Above



Hypothetical (Slide 2 of 2)

- ▶ A police department has an incident report for a motor vehicle accident. The report lists insurance information pertaining to the involved vehicles. What information is subject to common-law privacy?
 - A. Insurance Carrier Name
 - B. Insurance Carrier Phone Number
 - C. Insurance Policy Expiration Date
 - D. A & B
 - E. All of the Above



Criminal History Compilation

- ▶ A criminal history compilation is a compilation or summary of an individual's criminal history when created by a governmental body and includes:
 - A note in law enforcement records stating the governmental body's database reveals an individual was previously convicted of a specified crime
 - Law enforcement records depicting an individual as a suspect, arrestee, or criminal defendant when the requestor seeks unspecified records pertaining to a named individual



Types of Information Not Included in an Individual's Criminal History Compilation

- ▶ Records involving an individual as a complainant, victim, or witness.
- ▶ Warrant information because it involves an individual's current involvement in the criminal justice system.
- ▶ Driving record information
- ▶ Information an individual volunteers about past criminal acts



Types of Requests That Do Not Implicate an Individual's Privacy Interest

- ▶ A request for specified records
- ▶ A request for records pertaining to a specified address
- ▶ Requests for records involving the requestor or the requestor's minor children



Criminal History Compilation Tips

- ▶ How the information is requested matters.
- ▶ Individual named in the request must be a suspect, arrestee, or criminal defendant in the responsive information.
- ▶ Be careful not to reveal confidential information during briefing.
- ▶ Right of access under section 552.023



Hypothetical (Slide 1 of 5)

- ▶ Jane requests all police reports involving her neighbor Max. The police department has these records:
 - An offense report for identity theft listing Max as the complainant
 - An offense report for assault listing Max as the suspect
 - An offense report listing Max as a witness for injury to a child and public intoxication
 - An offense report for attempted suicide listing Max as an involved party
 - An offense report for a sexual offense listing Max as a suspect
 - A citation for Max for speeding in a school zone



Hypothetical (Slide 2 of 5)

- ▶ Which of the responsive offense reports may the department withhold under common-law privacy in response to Jane's request?



Hypothetical (Slide 3 of 5)

- ▶ Jane requests all police reports involving her neighbor Max. The police department has these records:
 - An offense report for identity theft listing Max as the complainant
 - An offense report for assault listing Max as the suspect
 - An offense report listing Max as a witness for injury to a child and public intoxication
 - An offense report for attempted suicide listing Max as an involved party
 - An offense report for a sexual offense listing Max as a suspect
 - A citation for Max for speeding in a school zone



Hypothetical (Slide 4 of 5)

- ▶ Under which of the following requests would information be withheld as a compilation of an individual's criminal history?
 - A. Tony requests Andy's March 23rd and March 31st arrest reports
 - B. Tim requests all 2019 incident reports at 2001 Main Street
 - C. Jenny requests all her arrest reports from June 2020
 - D. Larry requests all of Sara's arrest reports to date



Hypothetical (Slide 5 of 5)

- ▶ Under which of the following requests would information be withheld as a compilation of an individual's criminal history?
 - A. Tony requests Andy's March 23rd and March 31st arrest reports
 - B. Tim requests all 2019 incident reports at 2001 Main Street
 - C. Jenny requests all her arrest reports from June 2020
 - D. Larry requests all of Sara's arrest reports to date



Sexual Offenses

- ▶ If the requestor knows the identity of the sexual offense victim, the entirety of the offense report must be withheld.
- ▶ If the requestor does not know the identity of the sexual offense victim, the identifying information of the sexual offense victim must be withheld.



Tips When Information Relates to a Sexual Offense

- ▶ The identifying information of a sexual offense victim must be withheld under section 552.101 in conjunction with common-law privacy when releasing basic information pursuant to section 552.108(c).
- ▶ Check the requestor's relationship with the victim.



Attempted Suicide

- ▶ If the requestor knows both the identity of the individual who attempted suicide and knows the individual attempted suicide, the entirety of the offense report must be withheld.
- ▶ If the requestor does not know the identity of the individual that attempted suicide or does not know the individual attempted suicide, only those portions of the information revealing the individual attempted suicide must be withheld.



Tips When Information Relates to an Attempted Suicide

- ▶ What the requestor knows matters.
- ▶ Let us know if you have specific codes or if locations reveal the nature of the events.
- ▶ Suicidal statements alone are not enough to meet the elements to withhold a report in its entirety.



Hypothetical (Slide 1 of 2)

- ▶ Mona, a witness, asks for the report pertaining to George's recent suicide attempt. Must this report be withheld in its entirety from Mona?
 - A. Yes
 - B. No



Hypothetical (Slide 2 of 2)

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 - A. Yes
 - B. No



Questions?

OAG's Open Government Hotline
(877) OPEN-TEX

OAG Website

www.texasattorneygeneral.gov/open/index.shtml