



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2006

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2006-14253

Dear Mr. Stewart:

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# 266187.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all incident reports pertaining to a specified location from January 1, 2004 through September 14, 2006, and the 911 report pertaining to case number 06-16450. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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, 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 determine that case numbers 04-19603, 04-20490, and 05-17053 consist of files, reports, records, communications, or working papers used or developed in investigations under chapter 261. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that case numbers 04-19603, 04-20490, and 05-17053 are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) 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 Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, the juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Case number 06-01742 pertains to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, case number 06-01742 is confidential under section 58.007 and must be withheld under section 552.101. Although you also seek to hold incident history number A050120097 under section 552.101 in

conjunction with section 58.007 of the Family Code, we find that this information does not involve juvenile delinquent conduct and is not confidential under section 58.007. Thus, incident history number A050120097 may not be withheld under section 552.101 on this basis.

You raise section 552.108 of the Government Code for the remaining submitted information, case numbers 04-10931, 04-11635, 04-25754, 05-12212, 05-15379, 05-15492, 05-19452, 05-25931, 06-1627, 06-4269, 06-5522, 06-14464, 06-16450, 06-16983, and 06-17564. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*; Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that case numbers 04-10931, 04-11635, 04-25754, 05-12212, 05-15379, 05-15492, 05-19452, 05-25931, 06-1627, 06-4269, 06-5522, 06-14464, 06-16450, 06-16983, and 06-17564 are pending criminal cases. Based upon this representation and our review, we conclude that the release of this information 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), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, with the exception of basic information, the sheriff may withhold case numbers 04-10931, 04-11635, 04-25754, 05-12212, 05-15379, 05-15492, 05-19452, 05-25931, 06-1627, 06-4269, 06-5522, 06-14464, 06-16450, 06-16983, and 06-17564 under section 552.108(a)(1) of the Government Code.

The remaining submitted information contains several arrestees’ social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, the sheriff must withhold the arrestees’ social security numbers under section 552.147.¹

In summary, the sheriff must withhold case numbers 04-19603, 04-20490, and 05-17053 under section 552.101 of the Government Code in conjunction with section 261.201 of the

¹We note that section 552.147(b) of the Government Code 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.

Family Code. The sheriff must withhold case number 06-01742 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the sheriff may withhold case numbers 04-10931, 04-11635, 04-25754, 05-12212, 05-15379, 05-15492, 05-19452, 05-25931, 06-1627, 06-4269, 06-5522, 06-14464, 06-16450, 06-16983, and 06-17564 under section 552.108(a)(1) of the Government Code. The sheriff must withhold the arrestees' social security numbers under section 552.147 of the Government Code.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

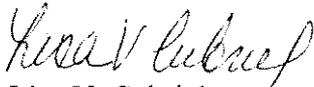
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²As our ruling is dispositive, we need not address your remaining arguments.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 266043

Enc. Submitted documents

c: Ms. Nancy McDonald
13707 Southline
Sugar Land, Texas 77478
(w/o enclosures)