



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2008

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street Suite 728
Richmond, Texas 77469-3108

OR2008-14399

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# 326116.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information related to two specified addresses during the past ten years. You state that some responsive information has been released to the requestor. 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.¹

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

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

(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 [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We find that report number 08-19191 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. As such, that information falls within the scope of section 261.201(a). As you do not indicate that the sheriff 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 that the sheriff must withhold report number 08-19191 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

You assert that the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

²We note that a parent or legal representative of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services. *See* Fam. Code § 261.201(g).

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(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.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 03-22588 is related to a pending investigation. However we note that incident report 03-22588 involves an allegation of criminal mischief that occurred on November 15, 2003. The longest possible statute of limitations for the offense described in this report is three years. *See* Pen. Code § 28.03(b)(7) (criminal mischief is felony of first degree if pecuniary loss is \$200,000 or more); Crim. Proc. Code art. 12.01(6) (providing an indictment or information on felony not listed in articles 12.01(1)-(5) may be presented within three years from the date of the commission of the offense, and not afterward). More than three years has elapsed since November 15, 2003. You have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of this police report would interfere with the detection, investigation, or prosecution of crime. Thus, report number 03-22588 may not be withheld under section 552.108(a)(1) or section 552.108(b)(1).

We note that report number 03-22588 contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). Because the purpose of section 552.130 is to protect the privacy interest of the license holder, the requestor has a right of access under section 552.023 of the Government Code to her own Texas driver's license number.³ *See id.* § 552.023(a). The sheriff must withhold the Texas motor vehicle record information of other individuals, which we have marked, under section 552.130.

In summary, the sheriff must withhold (1) report number 08-19191 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (2)

³If the sheriff receives another request for this information from a person who would not have a special right of access to the driver's license number, the sheriff should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁴

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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

⁴We note the remaining information contains social security numbers. 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. Gov't Code § 552.147. However, the requestor has a right of access to her own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with a vertical line extending downwards from the end of the name.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 326116

Enc. Submitted documents