



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Mr. W. Lee Auvenshine
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Highway 77 Suite 104
Waxahachie, Texas 75165-7832

OR2009-04900

Dear Mr. Auvenshine:

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# 339816.

The Ellis County and District Attorney's Office and the Ellis County Sheriff's Department (collectively the "county") received a request for records relating to a specified time interval and cases of assault or family violence, including information relating to cases the district attorney's office has rejected and cases involving a named sheriff's officer. You inform us that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that some of the submitted information was created after the date of the county's receipt of this request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.¹ We also note that some of the submitted information does not fall within the time interval specified by the requestor. Thus, the information that either did not exist when the county received this request or that does not fall within the specified time interval is not responsive to the request. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released in response to this request.

¹See *Econ. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We next note that section 552.101 of the Government Code is applicable to some of the submitted information.² Section 552.101 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. Section 58.007 of the Family Code provides in part:

(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); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have marked responsive information involving juvenile offenders that the county must withhold in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in part:

(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:

²Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

(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, audiotapes, videotapes, 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.

Id. § 261.201(a); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We find that some of the responsive information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. Thus, that information, which we have marked, falls within the scope of section 261.201(a). As you do not indicate that the county 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 county must withhold the marked information in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information in the remaining responsive records that is intimate or embarrassing and not a matter of legitimate public interest. The county must withhold that information under section 552.101 in conjunction with common-law privacy.

We note that the remaining records include court documents, which we have marked. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold the court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes

information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the county may not withhold any of the information in the court documents under section 552.108 of the Government Code. As you claim no other exception to the disclosure of the information in the court documents, and none of that information is expressly confidential under other law, the marked court documents must be released pursuant to section 552.022(a)(17).

Next, we address your claims under section 552.108. You raise section 552.108(a)(1), which 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the remaining responsive information that the county seeks to withhold under section 552.108(a)(1). You state that the marked information is related to pending criminal cases. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the marked information. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You also raise section 552.108(a)(2), which excepts “[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). You also have marked the remaining responsive information that the county seeks to withhold under section 552.108(a)(2). You indicate that the marked information is related to concluded criminal investigations that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to the marked information.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information includes, among other things, a detailed description of the offense, the names of the arresting and investigating officers, and the name, age, address, race, sex, occupation, alias, social security number, police department identification number, and physical condition of an arrested person. The county must release basic information, even if the information does not literally appear on the front page of an offense or arrest report.³ *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of

³We note that the remaining responsive information includes 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.

information deemed public by *Houston Chronicle*). The county may withhold the remaining marked information related to the pending and concluded investigations under section 552.108.

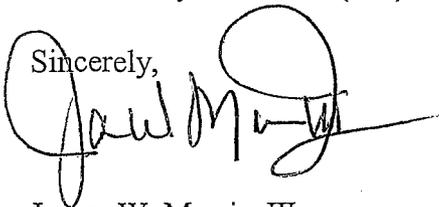
Lastly, section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We agree that the county must withhold the Texas drivers' license numbers that you have marked in the remaining responsive information under section 552.130.

In summary: (1) the county must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code and common-law privacy; (2) the marked court documents must be released pursuant to section 552.022(a)(17) of the Government Code; (3) the county may withhold the marked information related to the pending and concluded investigations under section 552.108 of the Government Code, except for the basic information that must be released under section 552.108(c); and (4) the county must withhold the marked Texas drivers' license numbers under section 552.130 of the Government Code. The rest of the submitted 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", written over the word "Sincerely,".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 339816

Enc: Submitted documents

c: Requestor
(w/o enclosures)