



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-13102

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# 355526.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all calls for service at a specified address during a specified time period, the 9-1-1 call recordings or reasons for service calls for seven specified incidents, and the incident reports for three specified incidents. You state the sheriff will provide some of the requested information to the requestor. You claim the submitted incident reports, calls for service reports, and 9-1-1 call recording are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has specifically excluded social security numbers, driver's license numbers, and state identification card numbers from her request. Thus, any such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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 protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, § 1, 2009 Tex. Sess. Law Serv. 1965 (Vernon) (to be codified as an amendment of Fam. Code § 261.201). You claim incident report number 09-13169 and its related call for service report number A091400574 are confidential under section 261.201. Although these reports reference child protective services, the reports do not reflect, nor have you explained, that the reports were used or developed in an investigation by the sheriff or any other entity of suspected child abuse or neglect. Therefore, we find you have failed to demonstrate the applicability of section 261.201 to incident report number 09-13169 and call for service report number A091400574. Consequently, these reports may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ As you have claimed no other exceptions to disclosure for these reports, they must be released.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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:

¹We note the requestor may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, "shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure." Fam. Code § 261.201(g).

- (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, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim incident report number 01-8502 and its related records are confidential under section 58.007(c). We note, however, the arrestee listed in the report was seventeen years old at the time of the offense. Thus, we find the information does not involve a juvenile as a suspect or offender. Therefore, we conclude incident report number 010008502 and its related records may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert incident report number 01-8502 and its related records pertain to a criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 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), and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold incident report number 01-8502 and its related records under section 552.108(a)(2) of the Government

Code.² We note the sheriff has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You claim some of the information in calls for service report numbers A091740825 and A051180469, as well as the 9-1-1 recording pertaining to calls for service report number A091740825, is protected by common-law privacy. Upon review, we agree portions of these records, which we have marked or indicated, are intimate or embarrassing and of no legitimate public concern. Thus, the sheriff must withhold the marked or indicated information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information in calls for service report number A091740825 contains Texas driver's license information other than a driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.³ Gov't Code § 552.130(a)(1), (2). Thus, the sheriff must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, the sheriff may withhold incident report number 01-8502 and its related records under section 552.108(a)(2) of the Government Code. The sheriff must withhold the marked information in calls for service report numbers A091740825 and A051180469, and the indicated information on the 9-1-1 call recording, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must also withhold the marked Texas driver's license information in calls for service report number A091740825 under section 552.130 of the Government Code. The remaining information must be released.

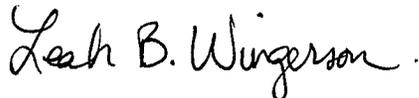
²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for a portion of this information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 355526

Enc. Submitted documents

c: Requestor
(w/o enclosures)