ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-14058

Dear Ms. Lentz:

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#393926.

The Williamson County Sheriff's Office (the "sheriff") received a request for three specified incident reports. 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.

Initially, we note you did not submit information responsive to the portion of the request seeking a specified animal control report. To the extent any information responsive to this portion of the request existed on the date the sheriff received the request, we assume the sheriff has released it. If the sheriff has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses information protected by section 261.201 of the Family Code. Section 261.201 provides in part:

> (a) Except as provided by Section 261.203, 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:
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> > (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.
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> . . .
>
> (k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, 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.
>
> (l) 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:
>
> > . . .
> >
> > (2) any information that is excepted from required disclosure under [the Act], or other law; and
> >
> > (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted reports were used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). Thus, we find the submitted information is generally confidential under section 261.201 of

the Family Code. We note, and you acknowledge, that the requestor is the parent of the child victim listed in the reports and is not alleged to have committed the suspected abuse. Therefore, the sheriff may not use section 261.201(a) to withhold the submitted reports from this requestor. Fam. Code §261.201(k). We note that section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). We also note that section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will consider your arguments under sections 552.108, 552.130, and 552.147 of the Government Code.

Section 552.108 of the Government Code 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 the requirements of Section 552.021 if:
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> . . .
>
> (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[.]

Gov't Code § 552.108(a)(2). A governmental body claiming subsection 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state no arrests were made and no criminal charges were pursued. Thus, you state the submitted information relates to a criminal investigation that ended in a result other than conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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 the identity of the complainant. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of the basic information, the sheriff may withhold the submitted information under section 552.108(a)(2). As noted above, section 261.201(l)(3) of the Family Code states the identity of the reporting party shall be withheld from disclosure. Fam. Code § 261.201(l)(3). Thus, in releasing the basic

information, the sheriff must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.[1] As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID#393926

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]We note that the requestor has a special right of access to the information being released in this instance under section 261.201(k) of the Family Code. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.