



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

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

OR2011-02058

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# 408671.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information related to a specified address. You state some responsive information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of 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 section encompasses information protected by other statutes. Section 261.201 of the Family Code provides in part:

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

(a) [T]he 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, audiotapes, videotapes, 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 find that incident report number 08-14, along with its related call sheet, consists of files, reports, records, communications, audiotapes, videotapes, or working papers was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining abuse). Thus, we find that this information is within the scope of section 261.201 of the Family Code. As you do not indicate the sheriff has adopted a rule governing the release of this type of information, we assume that no such regulation exists. We, therefore, conclude that incident report number 08-14, along with its related call sheet, is confidential pursuant to section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the sheriff must withhold incident report number 08-14, along with its related call sheet, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code §552.108(a)(1). 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 at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 09-13702 and 09-14371, along with their related call sheets, relate to pending criminal cases. Based on your representation and our review of the information at issue, we find 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559

²As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

(Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to report numbers 09-13702 and 09-14371 and their related call sheets.

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). You state report numbers 07-27756, 08-12, 08-26602, 09-19609, 10-3225, and 10-20531, along with their related call sheets, relate to closed criminal cases that did not result in a conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude section 552.108(a)(2) is generally applicable to report numbers 07-27756, 08-12, 08-26602, 09-19609, 10-3225, and 10-20531, and their related call sheets.

We note, however, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The sheriff must release basic information, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the sheriff may withhold report numbers 09-13702 and 09-14371, along with their related call sheets, under section 552.108(a)(1) and report numbers 07-27756, 08-12, 08-26602, 09-19609, 10-3225, and 10-20531, and their related call sheets, under section 552.108(a)(2).

You contend the basic information related to report number 08-26602, which pertains to a charge of harassment, is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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 the common-law right of privacy, which protects information if it (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 and 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. Upon review, however, we find the sheriff has failed to demonstrate that any of the basic information is intimate or embarrassing and of no legitimate concern. Therefore, none of the basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff must withhold report number 08-14 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released, the sheriff may withhold report numbers 09-13702 and 09-14371, along with their related call sheets, under section 552.108(a)(1) and report numbers 07-27756, 08-12, 08-26602, 09-19609, 10-3225, and 10-20531, and their related call sheets, under section 552.108(a)(2).³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 408671

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling for this information is dispositive, we need not address your remaining arguments against its release.