



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2011

Ms. Jeri Yenne
Criminal District Attorney
Brazoria County
111 East Locust Street, Suite 408A
Angleton, Texas 77515

OR2011-03836

Dear Ms. Yenne:

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# 411828.

The Brazoria County Sheriff's Office (the "sheriff") received a request for information pertaining to calls at a specified location since 1995. You claim that some of the submitted information subject to a previous determination by this office and the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state Exhibit C was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-19340 (2010). In that ruling, we found that, with the exception of basic information, the sheriff may withhold the information at issue under section 552.108(a)(1) of the Government Code. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the sheriff may continue to rely on that ruling as a previous determination and withhold or release Exhibit C in accordance with Open Records Letter No. 2010-19340. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that

information is or is not excepted from disclosure). We will consider your argument for the remaining information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such section 58.007 of the Family Code, which 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 title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Upon review, we find the information we have marked consists of law enforcement records that involve juveniles engaged in conduct indicating a need for supervision occurring after September 1, 1997. It does not appear any of the exceptions in section 58.007 of the Family Code applies to this information. Therefore, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You claim the remaining information is confidential under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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). You state the remaining information concerns criminal investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we conclude section 552.108(a)(2) is generally applicable to the remaining information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The sheriff must release basic information, including detailed descriptions of each offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the information at issue includes computer aided dispatch (“CAD”) reports. In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Therefore, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(2).

We note, however, that some of the basic information is subject to common-law privacy. Section 552.101 of the Government Code 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. We have marked the information which is highly intimate and embarrassing and not of legitimate public interest. Therefore, in releasing basic information, the sheriff may not release the information we marked under section 552.101

in conjunction with common-law privacy. The remaining basic information must be released.

In summary, the sheriff may continue to withhold or release Exhibit C in accordance with Open Records Letter No. 2010-19340. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tf

Ref: ID# 411828

Enc. Submitted documents

c: Requestor
(w/o enclosures)