



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2011-08365

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# 420313.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for case numbers 10-33875 and 11-7114 and call slip numbers A103560277, A110790251, A110800570, and A110800572. You claim that the submitted information is 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 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. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

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.

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For the purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). Upon review, we find case number 11-7114 and call slip numbers A110800570 and A110800572 involve a juvenile engaged in conduct indicating a

need for supervision. Thus, these reports are within the scope of section 58.007(c). However, we note the requestor in this instance is a parent of a juvenile offender listed in the reports at issue. Accordingly, these reports may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure of the reports at issue, as well as for the remaining information.

Section 552.101 of the Government Code also encompasses article 63.017 of the Code of Criminal Procedure, which provides the following:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend case number 11-7114 and its corresponding call slip numbers A110800570 and A110800572 are confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, "clearinghouse" is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), 63.002(a). The information at issue consists of an incident report and the related call slips that were created by the sheriff. These incident reports and call slips are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff may not withhold the information at issue under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), 63.002(a).

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

(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.

...

(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 identify of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Although case number 11-7114's corresponding call slip numbers A110800570 and A110800572 reference Child Protective Services, the reports do not reflect, nor have you explained, how this information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information at issue is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). Therefore, the sheriff may not withhold case number 11-7114 or call slip numbers A110800570 and A110800572 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, upon review, we find call slip number A110790251 was used or developed in an investigation under chapter 261 of the Family Code. *See id.*; *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, we find call slip number A110790251 is generally confidential under section 261.201 of the Family Code. However, the requestor is a parent of the child victim listed in the report and is not alleged to have committed the suspected abuse. Therefore, in this instance, call slip number A110790251 may not be withheld from this requestor on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.*

§ 261.201(1)(3). Further, section 261.201(1)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). As you also raise section 552.108 of the Government Code for this information, we will consider your argument under this exception. We will also consider your arguments under sections 552.101 and 552.108 for the remaining information.

Section 552.108(a)(1) 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that case number 11-7114 and call slip numbers A110800570 and A110800572 relate to a pending criminal investigation. Based on your representations and our review of the information at issue, we conclude that 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 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to incident case number 11-7114 and call slip numbers A110800570 and A110800572.

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 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 that case number 10-33875 and call slip numbers A103560277 and A110790251 relate to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to case number 10-33875 and call slip numbers A103560277 and A110790251.

We note, however, that 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). Therefore, with the exception of basic information, the sheriff may withhold case number 11-7114 and call slip numbers A110800570 and A110800572 under section 552.108(a)(1) of the Government Code and case number 10-33875 and call slip numbers A103560277 and A110790251 under

section 552.108(a)(2) of the Government Code.² However, in releasing basic information from call slip number A110790251, 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(1)(3) of the Family Code. As our ruling is dispositive, we need not address your remaining arguments under section 552.101 against disclosure of the submitted information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 420313

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As noted, the requestor has a special right of access to the information being released in this instance. 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.