



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2013

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

OR2013-04229

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# 481190.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all call for service reports to a specified address from September 2008 to the date of the request, including five specified call numbers. You state you have released some information to the requestor. You claim that the remaining requested 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. This exception encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

¹We assume that 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 that 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 [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.

Fam. Code § 261.201(a). You argue the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes sexual assault under Penal Code section 22.011). The information at issue consists of a report of sexual assault involving a juvenile. Although section 101.003(a) of the Family Code defines a “child” for purposes of section 261.201 as a “person under 18 years of age who is not and has not been married or who has not had the disabilities of minorities removed for general purposes,” *id.* § 101.003(a), we note section 22.011 of the Penal Code defines a “child” as “a person younger than seventeen years of age.” Penal Code § 22.011(c)(1). We find, when read together, section 261.001(1)(E) of the Family Code and section 22.011(c)(1) of the Penal Code prescribe sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. In this instance, we are unable to determine the age of the victim in the information at issue. Thus, we must rule conditionally. To the extent the victim in the information was a child as defined by section 22.011(c)(1) at the time of the incident at issue, this information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the victim in the submitted information was not a child as defined by section 22.011(c)(1) at the time of the incident at issue, this information may not be withheld under section 261.201. In that instance, we address your remaining arguments against disclosure.

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). A governmental body claiming section 552.108(a)(2) must demonstrate that 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a closed case that ended in a result other than conviction or

deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.²

We note, 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). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(2).

We note basic information includes an identification and description of the complainant and a detailed description of the offense. In this instance, the information at issue is related to an alleged sexual offense, and the complainant is also the alleged sexual assault victim. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has concluded common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. *See* Open Records Decision Nos. 393 (1983), 339 (1982). Therefore, in releasing basic information, the sheriff's office must withhold the information we have marked that identifies the complainant under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the victim in the submitted information was a child as defined by section 22.011(c)(1) of the Penal Code at the time of the incident at issue, this information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the victim in the submitted information was not a child as defined by section 22.011(c)(1) of the Penal Code at the time of the incident at issue, with the exception of basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff's office must withhold the victim's identifying information we have 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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a large, stylized flourish extending to the left.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 481190

Enc. Submitted documents

c: Requestor
(w/o enclosures)