



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2013

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

OR2013-15023

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# 497725.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for five specified reports. You claim 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 of the Government Code encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent

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.

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 assert report number 13-11962 is confidential under section 261.201. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of ch. 261); *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). We note, however, report number 13-11962 pertains to an investigation of an assault in which the alleged victim is an adult. Consequently, although you state a referral was made to Child Protective Services, we find you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. We therefore determine section 261.201 is not applicable in this instance. Accordingly, the sheriff’s office may not withhold report number 13-11962 under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. *Id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 provides in relevant 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.

...

(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 [the Act] or other law.

Id. § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), a "child" is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves a child engaged in delinquent conduct that occurred after September 1, 1997. Thus, the submitted information is subject to section 58.007(c). In this instance, however, the requestor is the parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning his child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us offense report number 13-12968 relates to a pending criminal investigation, and the release of this information at this time would interfere with the investigation and prosecution. Based upon these representations, we conclude section 552.108(a)(1) is

applicable and the release of offense report number 13-12968 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 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. You state the remaining submitted information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the remaining submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, with the exception of the basic information, you may withhold offense report number 13-12968 from disclosure under section 552.108(a)(1) of the Government Code, and the remaining submitted information from disclosure under section 552.108(a)(2) of the Government Code.²

In summary, with the exception of the basic information, which must be released, the sheriff's office may withhold offense report number 13-12968 under section 552.108(a)(1) of the Government Code and the remaining submitted information under section 552.108(a)(2) of the Government Code.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.texasattorneygeneral.gov/open/>

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

³We note this requestor has a special right of access under section 58.007(e) of the Family Code to the information being released. Therefore, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 497725

Enc. Submitted documents

c: Requestor
(w/o enclosures)