



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2014

Mr. Paul J. Stewart
Assistant County Attorney
County of Fort Bend
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2014-01592

Dear Mr. Stewart:

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# 512004.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for calls for service to a specified address during a specified time period. You state the sheriff's office will release some of the requested information. 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 public 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 made confidential by other statutes, such as section 58.007 of the Family Code, which provides, in relevant 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 that 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.

Fam. Code § 58.007(c). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim report number 11-28771 is subject to section 58.007. However, the suspect listed in this report was under ten years old at the time of the conduct at issue. Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find report number 11-28771 does not identify a juvenile suspect or offender for purposes of section 58.007. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Accordingly, report number 11-28771 is not confidential under section 58.007(c) and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). You state report numbers 11-15126, 11-28771, and 13-24204 are subject to section 261.201. Upon review, we find report number 11-28771 does not pertain to child abuse or child neglect. Accordingly, you have failed to demonstrate report number 11-28771 was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of 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). Furthermore, you have not established report number 11-28771 is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the sheriff’s office may not withhold report number 11-28771 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, based on your representations and our review, we find report numbers 11-15126 and 13-24204 are generally confidential under section 261.201 of the Family Code. We note,

however, the requestor is a parent of the child victim listed in these reports, and the parent is not alleged to have committed the suspected abuse or neglect. In this instance, the sheriff's office may not use section 261.201(a) to withhold these reports from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise sections 552.101 and 552.108 of the Government Code as exceptions to disclosure for report numbers 11-15126 and 13-24204. Therefore, we will address the applicability of these sections to these reports.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 13-24204 pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of this information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to report number 13-24204.

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). 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. *See id.* § 552.301(e)(1)(A). You state report numbers 11-12908, 11-15126, 11-18055, 11-19917, 11-28771, 12-7502, 12-8006, and 13-16751 pertain to concluded criminal cases that did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) generally applies to these reports.

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* 536 S.W.2d at 186-88. Basic information must be released even if it does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 (1976) (summarizing types of

information deemed public by *Houston Chronicle*). We note basic information does not include information subject to section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the sheriff's office may withhold report number 13-24204 under section 552.108(a)(1) and report numbers 11-12908, 11-15126, 11-18055, 11-19917, 11-28771, 12-7502, 12-8006, and 13-16751 under section 552.108(a)(2).²

You argue the basic information in report number 11-15126 may be protected by the common-law right to privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, as previously noted, the requestor is a parent of the minor child whose privacy interest is at issue in report number 11-15126. *See* Gov't Code § 552.023(a) (person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that "is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to his child that would otherwise be confidential under common-law privacy. Accordingly, the sheriff's office may not withhold any portion of the remaining information from this requestor under section 552.101 on the basis of common-law privacy.

In summary, with the exception of basic information, the sheriff's office may withhold report number 13-24204 under section 552.108(a)(1) of the Government Code and report numbers 11-12908, 11-15126, 11-18055, 11-19917, 11-28771, 12-7502, 12-8006, and 13-16751 under section 552.108(a)(2) of the Government Code.³

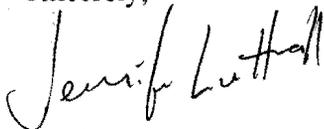
²Because our ruling as to this information is dispositive, we do not address your remaining arguments against its disclosure.

³Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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/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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 512004

Enc. Submitted documents

c: Requestor
(w/o enclosures)