



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2014

Mr. Jesse Blakley
Assistant District Attorney
Brazoria County
111 East Locust Street
Angleton, Texas 77515

OR2014-20303

Dear Mr. Blakley:

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# 542603.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for all police reports and call sheets related to a specified address during a specified period of time. You state the sheriff's office has released some of the requested information. 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 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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.

Fam. Code § 261.201(a), (k). Upon review, we agree the information submitted as Exhibit 3 relates to an investigation of alleged child abuse conducted by the sheriff's office under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 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 the disabilities of minority removed for general purposes). Accordingly, we find the information at issue is subject to chapter 261 of the Family Code. In this instance, the requestor is a parent of the child victim listed in the information at issue. However, we note the requestor is alleged to have committed the suspected abuse. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, we conclude Exhibit 3 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

(governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us the remaining information relates to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the remaining 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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 types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.²

We understand you to assert the basic information in Exhibits 2 and 4 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Section 552.101 also encompasses information protected by the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state the basic information in Exhibits 2 and 4 includes the identities of complainants who contacted the sheriff's office to report possible violations of criminal law. You do not indicate, nor does it appear, the subjects of the complaints know the identities of the complainants. Based upon your representations and our review, we conclude the sheriff's office has demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we have marked. Therefore, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to

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

demonstrate the remainder of the basic information in Exhibits 2 and 4 consists of the identifying information of an individual who made the initial report of a criminal violation to the sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold any of the remaining basic information under section 552.101 on that basis.

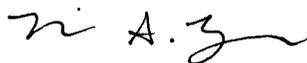
We understand you to assert the basic information in Exhibit 5 is protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, you seek to withhold the entirety of the basic information in Exhibit 5 under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the entirety of the information at issue under section 552.101 of the Government Code on that basis. However, upon review, we find portions of the information at issue, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining basic information may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office must withhold Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff's office may withhold the information we have marked in Exhibits 2 and 4 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must withhold the information we have marked in Exhibit 5 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.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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ds

Ref: ID# 542603

Enc. Submitted documents

c: Requestor
(w/o enclosures)