



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2014

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-23230

Dear Ms. Cost:

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# 547634 (DPS PIR No. 14-4168).

The Texas Department of Public Safety (the "department") received a request for offense reports regarding department investigations into improper relationships between educators and students (or similar offenses), and/or into indecency or sexual relations on a public school campus for ten specified counties for the past four years. 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 section 261.201 of the Family Code, which provides:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find report numbers 2009-00455, 2010-00203, 2010-00268, 2011-00272, 2011-00298, 2012-00110, and 2014-00157 were used or developed in investigations of alleged child abuse, and the information falls within the scope of section 261.201 of the Family Code. *See id.* §§101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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), 261.001 (defining “abuse” for purposes of chapter 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude report numbers 2009-00455, 2010-00203, 2010-00268, 2011-00272, 2011-00298, 2012-00110, and 2014-00157 are confidential under section 261.201(a) of the Family Code and must be withheld in their entireties under section 552.101 of the Government Code.¹ However, we are unable to determine the ages of the victims in report numbers 2014-00022 and 2014-00214. Accordingly, we must rule conditionally. If the victims in report numbers 2014-00022 and 2014-00214 are children for purposes of section 101.003(a) of the Family Code, the department must withhold the reports in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if none of the remaining alleged victims are children for purposes of section 101.003(a) of the Family Code, the department may not withhold report numbers 2014-00022 and 2014-00214 on this basis. Thus, we will address your arguments 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state report numbers 2014-00022 and 2014-00134 relate to ongoing criminal investigations. You further state the release of this information would interfere with the investigation and prosecution of these crimes. Based on these representations, we conclude the release of report numbers

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

2014-00022 and 2014-00134 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, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests 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) is applicable to this information.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, a detailed description of the offense and the identity of the complainant, but does not include the identities of victims or witnesses who are not the complainant. *See* ORD 127 at 4. Thus, with the exception of basic information, the department may withhold report numbers 2014-00022, to the extent section 552.101 in conjunction with section 261.201 of the Family Code does not apply, and 2014-00134 under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code also encompasses section 21.12 of the Penal Code, which provides a public or private school employee commits an offense if the employee engages in “sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works[.]” Penal Code § 21.12(a)(1). Additionally, section 21.12(d) provides “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.” *Id.* § 21.12(d). Thus, the identifying information we have marked of the student allegedly involved in an improper relationship with an educator is confidential, and must be withheld under section 552.101 in conjunction with section 21.12 of the Penal Code to the extent report number 2014-00214 is not subject to section 552.101 in conjunction with section 261.201 of the Family Code.³ Upon review, we find the remaining information does not identify a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator. *See id.* 21.12(a). Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with section 21.12(d).

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

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

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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. In Open Records Decision No. 393 (1983), this office concluded, generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The complainants are identified in the submitted information by using pseudonyms. We find the use of a pseudonym sufficiently protects the complainants' common-law privacy. Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the submitted information is subject to section 552.130 of the Government Code.⁴ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Upon review, we find the department must withhold the information we marked under section 552.130 of the Government Code.

In summary, the department must withhold report numbers 2009-00455, 2010-00203, 2010-00268, 2011-00272, 2011-00298, 2012-00110, and 2014-00157 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the victims in report numbers 2014-00022 and 2014-00214 are children for purposes of section 101.003(a) of the Family Code, the department must withhold the reports in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report numbers 2014-00022, to the extent section 552.101 in conjunction with section 261.201 of the Family Code does not apply, and 2014-00134 under

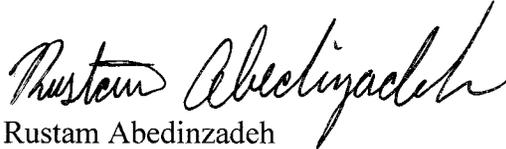
⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.108(a)(1) of the Government Code. The department must withhold the identifying information we have marked under section 552.101 in conjunction with section 21.12 of the Penal Code to the extent report number 2014-00214 is not subject to section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/ds

Ref: ID# 547634

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the information being released contains a social security number subject to section 552.147 of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this officer under the Act. Gov't Code § 552.147(b).