



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2015

Ms. Susan Fillion
Assistant County Attorney
County of Harris
1200 Baker Street, 2nd Floor
Houston, Texas 77002

OR2015-12669

Dear Ms. Fillion:

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# 568594 (HCSO File No. 14SO600538).

The Harris County Sheriff's Office (the "sheriff's office") received a request for ten specified incident reports. You state the sheriff's office will release some of the requested information. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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... 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 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 state the information in Exhibit B1 relates to a pending criminal investigation. Based on this representation, we conclude the release of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the information in Exhibit B1.

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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold the information in Exhibit B1 under section 552.108(a)(1) of the Government Code.

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 encompasses section 261.201 of the Family Code, which provides as follows:

(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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You contend the information in Exhibit B2 is confidential under section 261.201(a). Upon review, we find report number 10-168671 was used or developed in an investigation of alleged or suspected child abuse or neglect; thus this information falls within the scope of section 261.201 of the Family Code. See *id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 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(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). As the sheriff's office does not indicate it has adopted a rule that governs the release of this type of information, we assume no such

regulation exists. Given that assumption, and based on our review, we determine report number 10-168671 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the sheriff's office must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note, however, incident report number 12-76755 pertains to an investigation of alleged abuse or neglect that occurred in a child care facility that is regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated under chapter 42. Fam. Code § 261.201(h). Thus, section 261.201(a) of the Family Code is not applicable to report number 12-76755 and the sheriff's office may not withhold this report under section 552.101 of the Government Code on that basis.

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. This office has found that common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983): *cf.* Fam. Code § 261.201. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold the driver's license numbers we marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, Exhibit B1 may be withheld under section 552.108(a)(1) of the Government Code. Report number 10-168671 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must also withhold the information we have marked

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.101 of the Government Code in conjunction with common-law privacy. The driver's license numbers we have marked must also be withheld under section 552.130 of the Government Code. The remaining information must be released.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/som

Ref: ID# 568594

Enc. Submitted documents

c: Requestor
(w/o enclosures)