



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2015-13748

Dear Mr. Grove:

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# 570585.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to a specified address for a specified period of time. You state the sheriff's office will release some information. You claim the requested 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 encompasses information protected by section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in pertinent part, as follows:

(a) The following information is confidential and not subject to disclosure under [the Act]:

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.

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made by the sheriff’s office generally are not subject to section 48.101. Report number 14-34142 was created by the sheriff’s office in connection with a criminal investigation conducted by the sheriff’s office. Although you state a referral was made to the Adult Protective Services division of DFPS (“APS”) for report number 14-34142, you have not demonstrated the information at issue was used or developed in an investigation by APS under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Thus, you have failed to demonstrate report number 14-34142 pertains to an investigation conducted by an entity authorized to conduct such an investigation under chapter 48. Accordingly, the sheriff’s office may not withhold report number 14-34142 under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.108(a)(1) of the Government Code exempts 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 case numbers 15-793 and 15-8068 are pending criminal cases. Based on your 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 case numbers 15-793 and 15-8068.

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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case numbers 14-31202, 14-34142, 14-35733, 15-6855, and 15-6886 concluded in results other than convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to case numbers 14-31202, 14-34142, 14-35733, 15-6855, and 15-6886.

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 the basic information, you may withhold case numbers 15-793 and 15-8068 under section 552.108(a)(1) of the Government Code and case numbers 14-31202, 14-34142, 14-35733, 15-6855, and 15-6886 under section 552.108(a)(2) of the Government Code.²

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. Section 773.091 provides in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

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

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find some of the remaining information constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, section 773.091 is applicable to the records we have marked. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b).³

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme

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

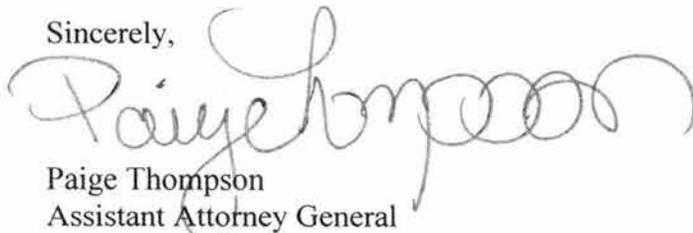
Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find some of the remaining information at issue does not identify an individual to whom the information pertains, and therefore, does not implicate any individual's right to privacy. Further, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, the sheriff's office may withhold case numbers 15-793 and 15-8068 under section 552.108(a)(1) of the Government Code and case numbers 14-31202, 14-34142, 14-35733, 15-6855, and 15-6886 under section 552.108(a)(2) of the Government Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, which must be released, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information.⁴

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

⁴We note basic information includes an arrestee's social security number. 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 requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Ref: ID# 570585

Enc. Submitted documents

c: Requestor
(w/o enclosures)