



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 21, 2015

Ms. Susan Fillion
Assistant County Attorney
Harris County Sheriff's Office
1200 Baker Street, Second Floor
Houston, Texas 77002-1206

OR2015-14804

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# 572326 (HCSO File No. 14SO400319).

The Harris County Sheriff's Office (the "sheriff's office") received a request for call summaries and detailed histories of each call for service regarding twelve specified addresses during a specified time period. 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 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 subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(a)(1)). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more.

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 those records contain substantially different types of information than that submitted to this office.

Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). Act of June 1, 2015, 84th Leg., R.S., H.B. 2633, § 1 (to be codified at Transp. Code § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

You have marked the information you seek to withhold under section 550.065. We note, however, the information does not consist of written reports of accidents. Thus, we find you have failed to demonstrate the applicability of section 550.065 to the information at issue. Consequently, the sheriff's office may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

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.

Fam. Code § 261.201(a). The submitted information pertaining to call number SB1205220155 was used or developed in an investigation by the sheriff's office of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 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 disabilities of minority removed for general purposes). Upon review, we find the information pertaining to call number SB1205220155 is within the scope of section 261.201 of the Family Code. You have not informed us, or otherwise indicated, the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find the information pertaining to call number SB1205220155 is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the sheriff's office must withhold the information pertaining to call number SB1205220155

under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

We note the information pertaining to call numbers SB130407036 and SB110815236 may also be subject to section 261.201 of the Family Code; however, we are unable to determine the ages of the child victims involved in the investigations of child abuse or neglect. Thus, we rule conditionally for this information. To the extent the information pertaining to call number SB130407036 or call number SB110815236 involves child victims under 18 years of age, the sheriff's office must also withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ To the extent the information pertaining to call number SB130407036 or call number SB110815236 does not involve child victims under 18 years of age, the sheriff's office may not withhold the information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in relevant part:

(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). Section 58.007(c) is applicable to records of juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). For purposes of section 58.007(c), "child" means 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). The submitted information pertaining to call number SB121108603 involves juvenile delinquent conduct that occurred after September 1, 1997. Further, it does not appear any of the exceptions in section 58.007 apply to this information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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

Therefore, the sheriff's office must withhold the information pertaining to call number SB121108603 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁴

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have indicated pertains to pending criminal investigations. We note, however, some of the incidents at issue involve criminal mischief, burglary of a motor vehicle, and other offenses. These offenses are misdemeanors or state jail felonies with statute of limitations periods of two or three years. *See* Penal Code §§ 28.03 (criminal mischief), 30.04 (burglary of vehicles); *see also* Crim. Proc. Code arts. 12.01 (stating certain felonies subject to three year limitations period), .02 (stating misdemeanors subject to two year limitations period). More than two or three years have elapsed since the events giving rise to the incidents at issue. You have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of this information, which we have indicated, would interfere with the detection, investigation, or prosecution of crime. Therefore, the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(1) to the information we have indicated. Consequently, the sheriff's office may not withhold the information we have indicated under section 552.108(a)(1) of the Government Code. However, based on your representations, we conclude release of the remaining information you have indicated 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) applies to this information.

Section 552.108(a)(2) 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 . . . 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. You state the information you have indicated pertains to concluded criminal investigations that did not result in convictions or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to this information.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 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 and the information we have indicated, the sheriff’s office may withhold the information you have indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.

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 or 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). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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.

We note some of the remaining information is subject to section 552.130 of the Government Code, which 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.⁵ Gov’t Code § 552.130(a). Thus, the sheriff’s office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff’s office must withhold the information pertaining to call number SB1205220155 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the information pertaining to call number SB130407036 or call number SB110815236 involves child victims under 18 years of age, the sheriff’s office must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff’s office must withhold the information pertaining to call number SB121108603 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information and the information we have

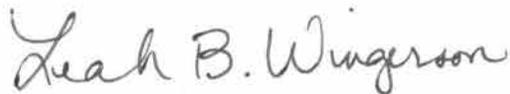
⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

indicated, the sheriff's office may withhold the information you have indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. 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 and under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 572326

Enc. Submitted documents

c: Requestor
(w/o enclosures)