



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

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

OR2015-17613

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# 577165.

The Harris County Sheriff's Office (the "sheriff's office") received four requests from the same requestor for the call slip related to each listed incident at four specified addresses. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."² Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile

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.

²The 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).

law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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). 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). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find some of the submitted call slips involve delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). However, we are unable to determine the age of the suspects identified in the call slips at issue. Accordingly, we must rule in the alternative. If any suspect identified in a call slip was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the sheriff’s office must withhold that call slip in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³ However, if a call slip does not identify any suspect who was ten years of age or older and under seventeen years of age at the time of the conduct, then the call slip does not involve juvenile conduct for purposes of section 58.007(c) of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis. In that instance, we will consider the applicability of other exceptions to disclosure of the information at issue.

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

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in 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.

Id. § 261.201(a). Some of the remaining call slips consist of reports of alleged abuse or neglect made to the sheriff's office. However we are unable to determine the age of the victims listed in the call slips at issue. *See 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 the disabilities of minority removed for general purposes), 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we must rule in the alternative. If a call slip involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, then the information is subject to chapter 261 of the Family Code. In that instance, as you do not indicate the sheriff's office has adopted a rule that governs the release of this type of information, the sheriff's office must withhold that call slip under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, if a call slip does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, then the call slip is not subject to chapter 261 of the Family Code and the sheriff's office may not withhold the call slip under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that instance, we will consider your remaining arguments against disclosure of the information at issue.

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

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

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 submitted as Exhibits B1, C1, D1, and E1 pertains to active criminal investigations or prosecutions. 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 any remaining information in Exhibits B1, C1, D1, and E1.

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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information submitted as Exhibits B2, C2, D2, and E2 pertains to closed cases that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to any remaining information in Exhibits B2, C2, D2, and E2.

However, we note 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 the basic information, the sheriff's office may withhold any remaining information in Exhibits B1, C1, D1, and E1 under section 552.108(a)(1) of the Government Code and may withhold any remaining information in Exhibits B2, C2, D2, and E2 under section 552.108(a)(2) of the Government Code.

In summary, if any suspect identified in a call slip was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the sheriff's office must withhold that call slip in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If a call slip involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, then the sheriff's office must withhold that call slip under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the sheriff's office may withhold any remaining information in Exhibits B1, C1, D1, and E1 under section 552.108(a)(1) of the Government Code and may withhold any remaining information in Exhibits B2, C2, D2, and E2 under section 552.108(a)(2) of the Government Code.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 577165

Enc. Submitted documents

c: Requestor
(w/o enclosures)