



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2015

Mr. Vance Hinds
Assistant County and District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2015-17838

Dear Mr. Hinds:

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# 579007.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a specified incident. You state the sheriff's office will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Although you do not raise section 552.147 of the Government Code in your brief, we understand you to assert this exception based on your markings.

²We assume that 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.

Gov't Code § 552.101. This section encompasses information protected by other statutes, such as 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code.

However, in this instance, the requestor is a parent of the child victim involved in the incident and is not alleged to have committed the abuse. As a result, this requestor has a right of access to the information at issue pursuant to section 261.201(k) and it may not be withheld from her under section 261.201(a). *Id.* § 261.201(k). However, pursuant to section 261.201(l)(2), the sheriff's office must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Thus, we will consider your remaining arguments against disclosure of the 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 you have marked under section 552.108 pertains to a pending criminal investigation and prosecution. 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, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³

You seek to withhold portions of the remaining information under sections 552.130 and 552.147 of the Government Code. 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(a). Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act (the “Act”). *Id.* § 552.147. However, we note the information you have marked under these sections pertains to the requestor's spouse. Because sections 552.130 and 552.147 protect personal privacy, if the requestor is acting as her spouse's authorized representative, then she has a right of access to her spouse's motor vehicle record information and social security number pursuant to section 552.023. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

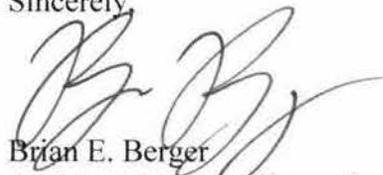
In that instance, the sheriff's office may not withhold the information you have marked under sections 552.130 and 552.147 from this requestor. *See id.* However, if the requestor is not acting as her spouse's authorized representative, then the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code and may withhold the information you have marked under section 552.147 of the Government Code.

In summary, the sheriff's office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. If the requestor is acting as her spouse's authorized representative, then the sheriff's office may not withhold the information you have marked under sections 552.130 and 552.147 of the Government Code from this requestor. However, if the requestor is not acting as her spouse's authorized representative, then the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code and may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

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⁴We note the requestor has a right of access to her own motor vehicle record information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Further, because this requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code, if the sheriff's office receives another request for this same information from a different requestor, then it must again seek a ruling from this office. *See* Fam. Code § 261.201(k).

Ref: ID# 579007

Enc. Submitted documents

c: Requestor
(w/o enclosures)