



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2015-19844

Dear Ms. Sheely:

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# 581568.

The Travis County Sheriff's Office (the "sheriff's office") received a request for two specified incident reports. You state the sheriff's office will release some responsive information. 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 information.

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 other statutes, such as 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (l)(2)-(3); Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon). The submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 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 chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is the foster parent of the child victim listed in the information and is not alleged to have committed the abuse. Section 261.201(k) provides a “parent, managing conservator, or other legal representative” of the child has a right of access to information otherwise confidential under section 261.201(a). *See* Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon). We understand foster children are generally under the conservatorship of the state and parties such as foster parents and foster agencies may have legal responsibilities toward such children. We are unable to determine whether the requestor is a legal representative or managing conservator of the child victim for the

purposes of section 261.201(k). Accordingly, we must rule conditionally. If the requestor is not a legal representative or managing conservator of the listed child victim, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is a legal representative or managing conservator of the child victim, then the sheriff's office may not withhold the information at issue from this requestor under section 261.201(a). *See id.* In this case, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. Fam. Code § 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your argument under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, the identity and a description of the complainant. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. As noted above, however, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. Fam. Code § 261.201(l)(3). In this instance, the complainant is also the reporting party. Accordingly, in releasing the basic information, the sheriff's office must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, if the requestor is not a legal representative or managing conservator of the listed child victim, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is a legal representative or managing conservator of the child victim, then, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. Further, in releasing the basic information, the sheriff's office must

withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.¹

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. Berget
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 581568

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹In this instance, the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. Accordingly, if the sheriff's office receives another request for this information from a different requestor, then the sheriff's office should again seek a decision from this office.