



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Ms. Josephine Ramirez Solis
Assistant District Attorney
County of Hidalgo
100 North Closer, Room 303
Edinburg, Texas 78539

OR2015-26059

Dear Ms. Solis:

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# 590327 (File No. 2015-1-6-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the victims' names, victims' dates of birth, dates of incidents, and locations of all unsolved murder cases from 1995 to 2015. 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. This section encompasses information made confidential by other statutes, such as 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 or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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). You assert the submitted information is confidential under section 58.007(c). However, you have failed to demonstrate any of the information at issue depicts an individual who is ten years of age or older or under the age of seventeen as a suspect or offender engaging in delinquent conduct or conduct indicating a need for supervision. Therefore, the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). Upon review, we find the information we have marked was used or developed in investigations of alleged or suspected child abuse or neglect by the sheriff’s office. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *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(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). However, we are unable to determine the age

of the alleged victim in the remaining information we have indicated. Thus, we must rule conditionally. To the extent the alleged victim in the remaining information we have indicated was a child as defined by section 101.003 of the Family Code at the time of the incident, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the victim in the remaining information we have indicated was not a child as defined by section 101.003 of the Family Code at the time of the incident, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that event, we address your remaining argument against release of this information as well as the remaining 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). Generally, 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 remaining submitted information relates to ongoing criminal investigations. Based upon your representation and our review, we conclude that the release of the remaining submitted information 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 the information at issue.

However, we note, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other things, the location of the crime, and the identification and description of the complainant. *Id.* Thus, with the exception of basic information, the sheriff’s office may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim in the information we have indicated was a child as defined by section 101.003 of the Family Code at the time of the incident, the sheriff’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the sheriff’s office may withhold the remaining submitted information under section 552.108(a)(1) 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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a long horizontal stroke extending to the right.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 590327

Enc. Submitted documents

c: Requestor
(w/o enclosures)