



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Natalie Broaddus  
Assistant District Attorney  
Brazoria County  
111 East Locust Street, Suite 408A  
Angleton, Texas 77515

OR2016-00258

Dear Ms. Broaddus:

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# 593119.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to four specified incidents. You state the sheriff's office does not have information responsive to a portion of the request.<sup>1</sup> 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 made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find call for service report numbers 2015-081717 and 2015-095908 consist of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 of Family Code). Thus, this information is within the scope of section 261.201 of the Family Code. Accordingly, the sheriff’s office must withhold call for service report number 2015-095908 under section 552.101 of the Government Code

in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> However, the requestor is a parent of the child victim listed in call for service report number 2015-081717, and is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the sheriff's office may not withhold call for service report number 2015-081717 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether call for service report number 2015-081717 is otherwise excepted from release under the Act.

Section 552.108(a) 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: (1) 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 information at issue 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, 710 (Tex. 1977). You state call for service report number 2015-095977 relates to a pending criminal investigation or prosecution. Based on this 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the information at issue.

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 call for service report numbers 2015-076745 and 2015-081717 pertain to cases that each 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Further, in Open Records Decision No. 649 (1996), this office concluded

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information contained in a computer-aided dispatch (“CAD”) report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Thus, with the exception of basic information, the sheriff’s office may withhold call for service report number 2015-095977 under section 552.108(a)(1) of the Government Code and call for service report numbers 2015-076745 and 2015-081717 under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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 and 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). Upon review, we find the information we have marked meets 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.

In summary, the sheriff’s office must withhold call for service report number 2015-095908 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, which must be released, the sheriff’s office may withhold call for service report number 2015-095977 under section 552.108(a)(1) of the Government Code and call for service report numbers 2015-076745 and 2015-081717 under section 552.108(a)(2) of the Government Code. However, in releasing basic information, 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.

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/>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

[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 "B. Berger". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 593119

Enc. Submitted documents

c: Requestor  
(w/o enclosures)