



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 11, 2016

Mr. Jesse Blakley, Jr.  
Assistant District Attorney  
Brazoria County  
111 East Locust  
Angleton, Texas 77515

OR2016-08069

Dear Mr. Blakley:

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# 605710 (ORR# 16-0077).

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for all calls and reports made to a specified address. The sheriff's office states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the report we marked Exhibit 3 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-23547 (2015). In that ruling, we determined, in part, the sheriff's office (1) must withhold some information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, and common-law privacy; (2) may withhold some information under section 552.101 of the Government Code in conjunction with the common-law informers privilege; and (3) must release the remaining information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, it may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive

right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the sheriff's office now raises section 552.108 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the sheriff's office may not now withhold the report we marked in Exhibit 3 under section 552.108 of the Government Code. Accordingly, we conclude the sheriff's office must continue to rely on Open Records Letter No. 2015-23547 as a previous determination and withhold or release the report we marked in Exhibit 3 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your arguments against disclosure of the remaining information, which is not subject to the prior ruling. 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 section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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). The sheriff's office asserts Exhibit 2 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Upon review, we find this information is within the scope of section 261.201(a). However, we note the requestor, who is not alleged to have committed the suspected abuse or neglect, may be a parent, managing conservator, or other legal representative of the child victims. Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victims, then the sheriff's office must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victims, then the sheriff's office may not withhold Exhibit 2 from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Therefore, if the requestor is a parent, managing conservator, or other legal representative of the child victims, then we must address the arguments of the sheriff's office to withhold Exhibit 2 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). The sheriff's office states Exhibit 2 and the remaining report in Exhibit 3 pertain to cases that concluded in a result other than

conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 the identity of the complainant. See ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the sheriff's office may withhold Exhibit 2 and the remaining report in Exhibit 3 in under section 552.108(a)(2) of the Government Code.

Next, you seek to withhold a portion of the basic information in the remaining report in Exhibit 3 under the common-law informer's privilege. Section 552.101 of the Government Code encompasses the informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state the remaining information in Exhibit 3 contains the identity of a complainant who reported possible violations of law to the sheriff's office. Further, there is no indication the subject of the complaint knows the identity of the complainant. Thus, the sheriff's office may withhold the complainant's identifying information in the remaining report in Exhibit 3 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the sheriff's office must withhold or release the report we marked in Exhibit 3 in accordance with Open Records Letter No. 2015-23547. If the requestor is not a parent, managing conservator, or other legal representative of the child victims at issue in Exhibit 2, then the sheriff's office must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victims, then the sheriff's office must release the basic information, but may withhold the remaining

information in Exhibit 2 under section 552.108(a)(2) of the Government Code. Except for basic information, the sheriff's office may withhold the remaining information in Exhibit 3 under section 552.108(a)(2) of the Government Code. In releasing basic information from the remaining report in Exhibit 3, the sheriff's office may withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/akg

Ref: ID# 605710

Enc. Submitted documents

c: Requestor  
(w/o enclosures)