



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2016

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2016-17940

Dear Mr. Grove:

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# 621817.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all records related to emergency calls made from a specified address. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 of the Government Code encompasses information made confidential under 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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 . . . 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 report numbers 06-4507, 09-20712, and 12-853 consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed as a result of investigations under chapter 261 of the Family Code. *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 the Family Code). Although you assert report number 16-8245 was referred to Child Protective Services (“CPS”), you do not explain, nor do the documents reflect, CPS used or developed this information in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Accordingly, we conclude the sheriff’s office may not withhold report number 16-8245 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note the requestor is a parent of the alleged child victims at issue in report numbers 06-4507, 09-20712, and 12-853. However, in report number 12-853 the requestor is alleged to have committed the alleged

child abuse. Thus, the requestor does not have a right of access to report number 12-853 under section 261.201(k). *Id.* § 261.201(k). Therefore, the sheriff's office must withhold report number 12-853 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, the requestor is not accused of committing the alleged or suspected child abuse or neglect in report numbers 06-4507 and 09-20712. Therefore, the sheriff's office may not withhold report numbers 06-4507 and 09-20712 from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your remaining arguments for the information at issue.

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 must 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). The sheriff's office states report number 16-8245 pertains to a case in which the victim has been advised to file her complaint with the Justice of the Peace. Although the sheriff's office states the victim has not yet filed her complaint with the Justice of the Peace, the sheriff's office states the statute of limitations has not run and the case may still be prosecuted. Based on this representation, we conclude the release of this 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, 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, we agree section 552.108(a)(1) is applicable to report number 16-8245.

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 report numbers 06-4507, 09-20712, 10-3686, 11-18853, and 15-41850 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.

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

²As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle information encompassed by section 552.130 of the Government Code. See ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff's office may withhold report number 16-8245 under section 552.108(a)(1) of the Government Code and report numbers 06-4507, 09-20712, 10-3686, 11-18853, and 15-41850 under section 552.108(a)(2) of the Government Code.³

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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows both the identity of the individual involved and the nature of the incident. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold report number 11-4767 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However we find you have not demonstrated any of the basic information of report number 06-4507 is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the basic information of report number 06-4507 under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office must withhold report number 12-853 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 report number 16-8245 under section 552.108(a)(1) of the Government Code and report numbers 06-4507, 09-20712, 10-2686, 11-18853, and 15-41850 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold report number 11-4767 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

³As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 621817

Enc. Submitted documents

c: Requestor
(w/o enclosures)