



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2016

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2016-19808

Dear Ms. Koonce:

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# 624885.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all police records for the past two years pertaining to a specific address and named individuals. 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 552.108(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). A governmental body claiming section 552.108(a)(1) must 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 submitted information pertains to a pending criminal prosecution. Based on your representation and our review, we conclude the release of the 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 submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976). Thus, with the exception of basic information, the sheriff's office may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

We note the submitted information indicates the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services ("DFPS") in accordance with chapter 42 of the Human Resources Code. See generally Hum. Res. Code ch. 42. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. See *id.* § 42.042(a), (e), (f)-(g) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447. 40 T.A.C. §§ 749.2445(c)(1), .2471(1); cf. Hum. Res. Code § 42.0561 (providing in part that "[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department."). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following:*

(A) *Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years. Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.*

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

...

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

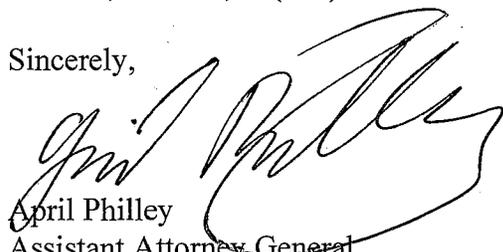
Id. § 749.2447(7)(A), (C) (emphasis added); *see* 40 T.A.C § 749.2445(a); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See* 40 T.A.C. § 749.2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2445.

In this instance, the requestor is seeking police reports that may pertain to the address of a current or prospective foster parent for the previous two years. Because we cannot determine whether the requestor is seeking access pursuant to section 749.2447(7) of the Texas Administrative Code, we must rule conditionally. Therefore, to the extent the requestor is seeking the submitted information as the representative of a child-placing agency and the information pertains to the address of a current or prospective foster parent, we conclude the requestor has a right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Although you seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, LP.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Furthermore, although you raise section 552.108 of the Government Code, we note a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See Open Records Decision Nos. 623 at 4* (1993) (exceptions in the Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the requestor is not seeking the submitted information as the representative of a child-placing agency or the information does not pertain to the address of a current or prospective foster parent, the sheriff's office may, with the exception of basic information, withhold the 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,



April Philley
Assistant Attorney General
Open Records Division

AP/eb

Ref: ID# 624885

Enc. Submitted documents

c: Requestor
(w/o enclosures)