



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 22, 2015

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

OR2015-22209

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# 584475.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for any calls or reports pertaining to named individuals at a specified address during a specified time period. 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.<sup>1</sup>

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 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

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<sup>1</sup>We 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.

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). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the sheriff's office to compile unspecified law enforcement records concerning the named individuals. However, we note the requestor is the authorized representative of the named individuals, who are minors. Thus, the requestor has a right of access to otherwise private information pertaining to the named individuals pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning themselves). Accordingly, the sheriff's office may not withhold any portion of the submitted information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find you have failed to demonstrate any of the submitted information pertaining to individuals other than the requestor or her minor children is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the submitted information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads as follows:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j)(2). 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). Report numbers 15-12530, 14-33368, 14-846, 13-28894, 13-22252, and 12-18081 involve juvenile conduct that occurred after September 1, 1997. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 3, 2015 Tex. Sess. Law Serv. 4310, 4311 (to be codified as an amendment to Fam. Code § 51.03(b)) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Thus, this information is subject to section 58.007(c). In this instance, the requestor is a parent of the juveniles and has a right to inspect information concerning her children under section 58.007(e). Therefore, the information at issue may not be withheld from her under

section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Fam. Code § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining arguments with respect to report numbers 15-12530, 14-33368, 14-846, 13-28894, 13-22252, and 12-18081.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(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 report number 15-19416 was used or developed in an investigation of alleged or suspected child abuse or neglect. *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); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)) (defining “abuse” for purposes of chapter 261 of the Family Code); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)) (defining “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff’s office must withhold report number 15-19416 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses information made confidential by article 63.017 of the Code of Criminal Procedure, which provides the following:

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

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. You contend some of the remaining information is confidential under article 63.017 of the Code of Criminal Procedure. For purposes of article 63.017, “clearinghouse” is defined as the missing children and missing persons information clearinghouse, which is established within the Texas Department of Public Safety. *Id.* arts. 63.001(7), .002(a). The information at issue consists of incident reports created by the sheriff’s office. The incident reports are not clearinghouse records for purposes of article 63.017. Therefore, the sheriff’s office may not withhold any of the information at issue under section 552.101 in conjunction with that article. *See id.* arts. 63.001(7), .002(a).

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 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). Your state report number 15-23501 relates to a pending investigation. Based on your representation and our review, we find 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 (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 report number 15-23501.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Your state report numbers 15-12530, 15-359, 14-33368, 14-846, 13-28894, 13-22252, 12-18081, P123130437, F120025224, P123300443, and F120026569 pertain to concluded investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. See ORD 127 at 3-4. We note some of the information at issue consists of call for service reports. In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted dispatch report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is 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, such information is generally public). Accordingly, with the exception of basic information, the department may withhold report number 15-23501 under section 552.108(a)(1) of the Government Code and report numbers 15-12530, 15-359, 14-33368, 14-846, 13-28894, 13-22252, 12-18081, P123130437, F120025224, P123300443, and F120026569 under section 552.108(a)(2) of the Government Code.<sup>3</sup>

In summary, the sheriff’s office must withhold report number 15-19416 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 department may withhold report number 15-23501 under section 552.108(a)(1) of the Government Code and report numbers 15-12530, 15-359, 14-33368, 14-846, 13-28894, 13-22252, 12-18081, P123130437, F120025224, P123300443, and F120026569 under section 552.108(a)(2) of the Government Code.<sup>4</sup>

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

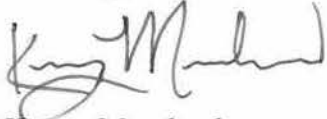
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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup>We note the requestor has a special right of access to some the information being released. See Fam. Code § 58.007(e); Gov’t Code § 552.023(a); ORD 481. Accordingly, if the sheriff’s office receives another request for this information from an individual other than this requestor, the sheriff’s office must again seek a ruling from this office.

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 "Kenny Moreland". The signature is fluid and cursive, with the first name "Kenny" being more prominent than the last name "Moreland".

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/eb

Ref: ID# 584475

Enc. Submitted documents

c: Requestor  
(w/o enclosures)