



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2017

Ms. Caitlin Culpepper
Records Supervisor
Taylor County Sheriff's Office
450 Pecan Street
Abilene, Texas 79602-1692

OR2017-01793

Dear Ms. Culpepper:

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# 643358.

The Taylor County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified incident involving a named individual. The first requestor also requested information pertaining to a specified address and the named individual 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 information.

Initially, we note the sheriff's office has only submitted information pertaining to the specified incident. To the extent information responsive to the remainder of the first request existed on the date the sheriff's office received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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, including 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.

...

(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 the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 of Family Code). Thus, the submitted information is confidential under section 261.201(a) of the Family Code, and the department must generally withhold it from the second requestor under section 552.101 of the

Government Code. However, we note section 261.201(a) provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

The second requestor is a representative of the Texas Board of Nursing (the “board”). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or the holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov’t Code § 411.125. In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

- (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). “Criminal history record information” (“CHRI”) is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Accordingly, under sections 411.087 and 411.125, the board may have a right of access to CHRI about the named individual contained in the sheriff’s office’s records.

Consequently, if the sheriff’s office determines that release of the CHRI is consistent with the purposes of the Family Code and the named individual is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility

for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the second requestor is authorized to obtain the named individual's CHRI contained in the submitted information and the sheriff's office must release the CHRI to the second requestor. Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access prevails over the general exceptions in the Act. *See* Open Records Decision Nos. 623 at 4 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the remainder of the submitted information is confidential under section 261.201(a) of the Family Code and must be withheld from the second requestor under section 552.101 of the Government Code. If, however, the sheriff's office determines that release is not consistent with the purposes of the Family Code or the named individual does not meet the criteria of section 411.125 of the Government Code, then the second requestor does not have a right of access to the named individual's CHRI, and the sheriff's office must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We note the first requestor is a parent of the alleged child victim in the submitted information and is not accused of committing the alleged or suspected child abuse or neglect. Therefore, the sheriff's office may not withhold the submitted information from the first requestor on the basis of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k). 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 against disclosure of the submitted information.

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 subsection 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 the submitted information involves the investigation of a charge against an individual that was ultimately dismissed and did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) 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. *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 also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes a detailed description of the offense but does not include dates of birth.

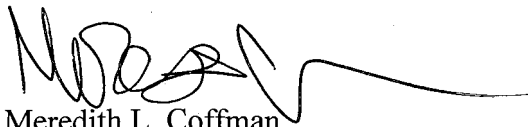
See id. Thus, with the exception of basic information, the sheriff's office may withhold the submitted information from the first requestor under section 552.108(a)(2) of the Government Code.¹

In summary, if the sheriff's office determines that release of the CHRI is consistent with the purposes of the Family Code and the named individual is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the sheriff's office must release the CHRI to the second requestor and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the sheriff's office determines that release is not consistent with the purposes of the Family Code or the named individual does not meet the criteria of section 411.125 of the Government Code, the sheriff's office must withhold the submitted information in its entirety from the second requestor 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 to the first requestor, the sheriff's office may withhold the submitted information from the first requestor under section 552.108(a)(2) 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information to the first requestor.

Ref: ID# 643358

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)