



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2017

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

OR2017-01823

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# 645807.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all copies of police reports and calls for a specified address during a specified time period. You state you have released some information. 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 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 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

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.

(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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). You claim police reports 16-36256, 16-37789, and 16-40228 are confidential under section 261.201 of the Family Code. Upon review, we agree police reports 16-36256, 16-37789, and 16-40228 consist of files, reports, records, communications, audiotapes, videotapes, and working papers, used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *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 this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Therefore, we conclude this information is subject to section 261.201(a). However, we note the requestor is alleged to have committed the suspected abuse or neglect in police report 16-37789. Thus, the requestor does not have a right of access to police report 16-37789 under section 261.201(k). *See id.* § 261.201(k). Therefore, the sheriff’s office must withhold police report 16-37789

under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note, however, the requestor is not alleged to have committed the suspected abuse or neglect in the remaining information at issue and the requestor may be a managing conservator or other legal representative of the child victim at issue. *See id.* § 261.201(k). Thus, we must rule conditionally. If the requestor is not a managing conservator or other legal representative of the child victim at issue, the sheriff's office must withhold police reports 16-36256 and 16-40228 in their 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 managing conservator or other legal representative of the child victim, the sheriff's office may not withhold police reports 16-36256 and 16-40228 from the requestor under section 261.201(a). *See id.* However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, in the event the sheriff's office determines the requestor is a managing conservator or other legal representative of the child victim, we find the sheriff's office must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.² Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your claims under sections 552.101 and 552.108 of the Government Code for police reports 16-36256 and 16-40228 and the remaining information.

Section 552.108(a) 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). Generally, 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 police reports 16-31303, 16-36256, 16-37485, and 16-36690 relate to pending criminal investigations. Based upon this representation, we conclude that the release of police reports 16-31303, 16-36256, 16-37485, and 16-36690 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information dealing with the detection, investigation, or prosecution of crime only in relation to 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 requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must

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

provide comments explaining why exceptions raised should apply to information requested). The sheriff's office states police report 16-40228 relates to a concluded case that did not result in a conviction or deferred adjudication. Based on the sheriff's office's representation, we conclude section 552.108(a)(2) is applicable to police report 16-40228.

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold police reports 16-31303, 16-36256, 16-37485, and 16-36690 from disclosure under section 552.108(a)(1) and police report 16-40228 under section 552.108(a)(2) of the Government Code.³

In the event the requestor is not a guardian or managing conservator of the individual at issue, then some of the basic information is subject to section 552.101 of the Government Code. Section 552.101 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 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). Upon review, we find some of the basic information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor may be a guardian or managing conservator of the individual at issue. In that case, the requestor has a special right of access to information related to this individual that would otherwise be protected under common-law privacy under section 552.023 of the Government Code. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor is not a guardian or managing conservator of the individual at issue, then in releasing basic information, the sheriff's office must withhold the information we marked in police reports 16-31303, 16-37485, and 16-36690 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold police report 16-37789 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not a managing conservator or other legal representative of the child victim at

³As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure of this information.

issue, then the sheriff's office must withhold police reports 16-36256 and 16-40228 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Additionally, the sheriff's office may withhold police reports 16-31303, 16-37485, and 16-36690 from disclosure under section 552.108(a)(1); but must release basic information from these reports. However, in releasing basic information, the sheriff's office must withhold the information we marked in police reports 16-31303, 16-37485, and 16-36690 under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is a managing conservator or other legal representative of the child victim, then the sheriff's office may withhold police reports 16-36256, 16-31303, 16-37485 and 16-36690 under section 552.108(a)(1) and police report 16-40228 under section 552.108(a)(2), but must release basic information from these reports. In releasing basic information for police reports 16-36256 and 16-40228, the sheriff's office must withhold the identity of the complainant pursuant to section 261.201(l)(3) of the Family 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 645807

Enc. Submitted documents

c: Requestor
(w/o enclosures)