



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2017

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

OR2017-07093

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# 652046.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports for calls made to a specified address and all 9-1-1 calls made from the specified address during a specified time period. You state the sheriff's office will release some information to the requestor. 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

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.

(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.

Fam. Code § 261.201(a). Upon review, we find case number 16-44378 was used or developed in an investigation by the sheriff's office of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Thus, this information is within the scope of section 261.201(a). You do not indicate the sheriff's office has adopted any rules that would permit the release of this information. Therefore, we conclude case number 16-44378 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, we find you have failed to demonstrate any of the remaining information at issue consists of a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. Therefore, we conclude section 261.201 is not applicable to the remaining information at issue, and none of it may be withheld under section 552.101 on that basis.

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: (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, and provide supporting documentation demonstrating, case numbers 16-38548 and 16-43953 relate to pending investigations and prosecutions. Based upon your representations, we conclude the release of case numbers 16-38548 and 16-43953 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 case numbers 16-38548 and 16-43953.

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 requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state case numbers 16-38162 and 16-39337 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to case numbers 16-38162 and 16-39337.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, an identification and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-87; ORD 127. Thus, with the exception of the basic information, the sheriff's office may withhold case numbers 16-38548 and 16-43953 under section 552.108(a)(1) of the Government Code and case numbers 16-38162 and 16-39337 under section 552.108(a)(2) of the Government Code.²

You also raise section 552.101 of the Government Code in conjunction with common-law privacy for the basic information in case number 16-43953. 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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate the basic information in case number 16-43953 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office may not withhold the basic information in case number 16-43953 under section 552.101 of the Government Code in conjunction with common-law privacy, and it must be released.

In summary, the sheriff's office must withhold case number 16-44378 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 case numbers 16-38548 and 16-43953 under section 552.108(a)(1) of the Government Code and case numbers 16-38162 and 16-39337 under section 552.108(a)(2) of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 652046

Enc. Submitted documents

c: Requestor
(w/o enclosures)