



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2017

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

OR2017-23881

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# 682347.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all incident reports pertaining to a named individual and the requestor during a specified time period. You state you will release some of the requested 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.<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 section 58.008 of the Family Code, which provides, in part:

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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 that those records contain substantially different types of information than that submitted to this office.

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code); Act of May 19, 2017, 85th Leg., R.S., S.B. 1488, § 7.002 (to be codified as amendments to Fam. Code § 51.03(b)); Act of May 30, 2017, 85th Leg., R.S., H.B. 29, § 21 (to be codified as amendments to Fam. Code § 51.03(b)) (defining “conduct indicating a need for supervision”). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the information at issue involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the sheriff’s office must withhold report number 15-23662 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>2</sup>

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:

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

- (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 some of the information at issue was used or developed in investigations conducted 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). We have no indication 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, the sheriff’s office must withhold report numbers 17-30253 and 17-30254 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup> However, we conclude the sheriff’s office has not established any of the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201(a), and the sheriff’s office may not withhold it under section 552.101 on that ground.

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. 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); Open Records Decision No. 434 (1986). You state report numbers 14-277, 15-26661, and 16-16400 pertain to criminal investigations that did not result in conviction or deferred adjudication. Based on this representation, 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.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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 (1976) (summarizing types of information considered to be basic information). Accordingly,

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

with the exception of basic information, the sheriff's office may withhold report numbers 14-277, 15-26661, and 16-16400 under section 552.108(a)(2) of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses article 63.017 of the Code of Criminal Procedure, which provides:

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. 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). Upon review, we find no portion of the basic information consists of clearinghouse records for purposes of article 63.017. Accordingly, the sheriff's office may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with article 63.107 of the Code of Criminal Procedure.

Further, section 552.101 of the Government Code encompasses information protected by section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Government Code in conjunction with Government Code chapter 411. Upon review, we find the sheriff's office failed to demonstrate any of the basic information consists of CHRI for purposes of section 411.083. Accordingly, no portion the basic information may be withheld under section 552.101 in conjunction with section 411.083 of the Government Code.

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. 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 the information which we have marked in the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining basic information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of the remaining basic information under section 552.101 of the Government Code on the basis of common-law privacy.

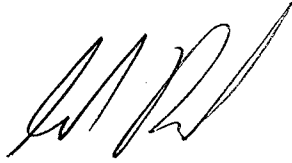
In summary, the sheriff's office must withhold report number 15-23662 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The sheriff's office must withhold report numbers 17-30253 and 17-30254 in their entirety under section 552.101 of the Government 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 report numbers 14-277, 15-26661, and 16-16400 under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

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 'SMP', written in a cursive style.

Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/tdw

Ref: ID# 682347

Enc. Submitted documents

c: Requestor  
(w/o enclosures)