



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

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

OR2017-29165

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# 689993.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for police reports pertaining to a specified address for a specified period of time. We understand 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 section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

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

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, 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[.]

Fam. Code § 261.201(a), (k), (l)(2). The sheriff's office asserts report numbers 16-3744 and 17-9759 were used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find the information at issue is within the scope of section 261.201(a). The requestor is a parent of the child victims at issue. The requestor was suspected of committing the alleged or suspected abuse in report number 17-9759. Therefore, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the sheriff's office must withhold report number 17-9759 under section 552.101 of the Government Code in

conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the requestor is not alleged to have committed the suspected abuse in report number 16-3744. Thus, the sheriff's office may not withhold this information from the requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(1)(2) provides any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we must determine whether this information is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(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 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

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

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

...

(2) any information that is excepted from required disclosure under [the Act] or any other law.

Id. § 58.008(b), (d), (e)(2); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017.³ *See id.* § 58.008(b). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find report number 12-15081 involves a juvenile offender, so as to fall within the scope of section 58.008(b). Although the requestor is the parent of the juvenile offender in the report at issue, that juvenile is now an adult. Accordingly, the requestor no longer has a right of access to her adult child's records under section 58.008(d). *See id.* § 58.008(d). Further, it does not appear that any of the exceptions in section 58.008 apply; therefore, the sheriff's office must withhold report number 12-15081 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴

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). You state report numbers 10-19405, 12-24061, 14-18137, 16-3744, 17-13435 and 17-13437 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 Publishing Co. v. City of Houston*,

³Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187. Thus, we understand you to raise section 58.008(b) of the Family Code.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

and includes, among other items, a detailed description of the offense. 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, with the exception of basic information, the sheriff's office may withhold report numbers 10-19405, 12-24061, 14-18137, 16-3744, 17-13435 and 17-13437 under section 552.108(a)(2) of the Government Code.⁵

In summary, the sheriff's office must withhold report number 17-9759 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must withhold report number 12-15081 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, the sheriff's office may withhold report numbers 10-19405, 12-24061, 14-18137, 16-3744, 17-13435 and 17-13437 under section 552.108(a)(2) of the Government Code.⁶

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

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⁵As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

⁶We note the requestor has a right of access to some of the information being released. *See* Fam. Code § 261.201(k). Thus, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 689993

Enc. Submitted documents

c: Requestor
(w/o enclosures)