



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2018

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

OR2018-04666

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# 697630.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a given address during a specified period of time. You indicate the sheriff's office will release 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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

¹We assume that 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.

Fam. Code § 261.201(a). Upon review, we find reports 14-631, 17-16085, and 17-46132 were used in investigations of alleged 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), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the sheriff’s office has adopted any rules that would permit the release of the information at issue. Accordingly, we find reports 14-631, 17-16085, and 17-46132 are subject to chapter 261 of the Family Code. Therefore, we conclude reports 14-631, 17-16085, and 17-46132 are confidential pursuant to section 261.201 of the Family Code and the sheriff’s office must withhold reports 14-631, 17-16085, and 17-46132 under section 552.101 of the Government Code on this basis.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.

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

Fam. Code § 58.008(b); *see also 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. *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 understand the sheriff’s office to assert report 13-35234 is subject to section 58.008(b).³ Upon review, we find report 13-35234 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the sheriff’s office must withhold report 13-35234 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴

Section 552.108(a) 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 reports 15-8958 and 17-21311 relate to ongoing prosecutions, and release of that information would interfere with the investigation and prosecution of these cases. Based upon this representation, we conclude the release of reports 15-8958 and 17-21311 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 reports 15-8958 and 17-21311.

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 reports 14-2493, 15-36493, 16-23178, 16-42612, and 17-14792 pertain to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to reports 14-2493, 15-36493, 16-23178, 16-42612, and 17-14792.

³Although the sheriff’s office argues the information at issue is made confidential by 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., S.B. 1304, § 21.

⁴As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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 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). Accordingly, with the exception of basic information, the sheriff’s office may withhold reports 15-8958 and 17-21311 under section 552.108(a)(1) of the Government Code and reports 14-2493, 15-36493, 16-23178, 16-42612, and 17-14792 under section 552.108(a)(2) 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 conclude some of remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly the sheriff’s office must withhold the information we marked in the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

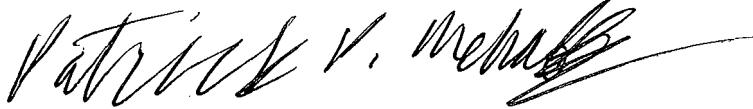
In summary, the sheriff’s office must withhold reports 14-631, 17-16085, and 17-46132 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff’s office must withhold report 13-35234 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, which must be released, the sheriff’s office may withhold reports 15-8958 and 17-21311 under section 552.108(a)(1) of the Government Code and reports 14-2493, 15-36493, 16-23178, 16-42612, and 17-14792 under section 552.108(a)(2) of the Government Code. In releasing the 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. The sheriff’s office must release the remaining 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,

A handwritten signature in black ink, appearing to read "Patrick P. Mehaffy", with a long horizontal flourish extending to the right.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/som

Ref: ID# 697630

Enc. Submitted documents

c: Requestor
(w/o enclosures)