



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-01514

Dear Ms. Lary:

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# 746588.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all call reports involving a specified address during a specified time period. You state you 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 information.

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:

(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.

Fam. Code § 58.008(b); *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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. 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 related to incident report numbers 18-10655 and 18-10675 involve juvenile offenders, 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 the information related to incident report numbers 18-10655 and 18-10675 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹

Section 552.108(a) of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1), (2). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

¹As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

investigation that has concluded in a final result other than a conviction or deferred adjudication. See Gov't Code §§ 552.108(a)(2), .301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information related to incident report numbers 18-23534 and 18-33691 relates to pending criminal investigations or prosecutions. Based upon this representation, we conclude that the release of this information 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 the information related to incident report numbers 18-23534 and 18-33691. You also state the information related to incident report numbers 13-21277, 15-11826, and 16-2128 relates to closed criminal investigations that concluded in results other than convictions or deferred adjudications. Thus, section 552.108(a)(2) is applicable to the information related to incident report numbers 13-21277, 15-11826, and 16-2128.

However, we note 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). We note basic information includes, among other items, a detailed description of the offense. See ORD 127 at 3-4. Accordingly, with the exception of basic information, the sheriff's office may withhold the information related to incident report numbers 18-23534 and 18-33691 under section 552.108(a)(1) of the Government Code and the information related to incident report numbers 13-21277, 15-11826, and 16-2128 under section 552.108(a)(2) of the Government Code.²

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center 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 federal government or other states. See Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to CHRI it generates. See *id.* 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(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI;

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

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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. You claim some of the basic information at issue consists of CHRI which must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, upon review, we find none of the basic information at issue consists of CHRI, and the sheriff's office may not withhold it on that basis.

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). We note the requestor has a right of access to her own private information pursuant to section 552.023 of the Government Code, and this information may not be withheld from her under common-law privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find some of the basic information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the basic information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

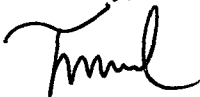
In summary, the sheriff's office must withhold the information related to incident report numbers 18-10655 and 18-10675 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold the information related to incident report numbers 18-23534 and 18-33691 under section 552.108(a)(1) of the Government Code and the information related to incident report numbers 13-21277, 15-11826, and 16-2128 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff's office must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information to this requestor.³

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 746588

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.