



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2019

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

OR2019-03016

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# 748857.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified recording and transcript. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected other statutes,

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.

such as section 48.101 of the Human Resources Code. Section 48.101 provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. The sheriff’s office argues report number 18-39197 is excepted from disclosure under section 48.101 because “the report documents that a referral was made to Adult Protective Services.” The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a sheriff’s office generally are not subject to section 48.101. Upon review, we find the information at issue reflects it was created by the sheriff’s office pursuant to its own investigation. Further, we have no indication the information was used or developed in an investigation under chapter 48 of the Human Resources Code. Consequently, the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Upon review, we find the information at issue does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Furthermore, the information at issue does not consist of records of the identity, evaluation, or treatment of patients by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, we find section 773.091 does not apply to any portion of the submitted information, and the sheriff's office may not withhold the submitted information under section 552.101 of the Government Code on that basis.

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). The sheriff's office states the submitted information pertains to a closed case that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information.

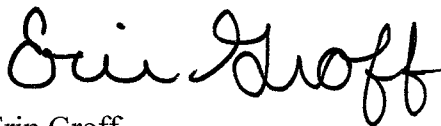
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic

information). Thus, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 748857

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the basic information being released pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k). If the sheriff's office receives another request for this information from a different requestor, then the sheriff's office should again seek a decision from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).