



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2019

Ms. Amy Bass-Domel  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2019-05427

Dear Ms. Bass-Domel:

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# 752223.

The Williamson County Sheriff's Office (the "sheriff's office") received four requests from two different requestors for information pertaining to a specified investigation. You state you have released some information to the second requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 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. This exception encompasses information protected by other statutes, such as 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:

(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.

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . 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), (b), (k), (l)(2). Upon review, we find the submitted information, which consists of an incident report and forensic interview, was used or developed in an investigation of alleged child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find the submitted information is subject to section 261.201 of the Family Code. However, we note the second requestor is the legal guardian of the child victim. Further, the second requestor is not alleged to have committed the suspected abuse. Therefore, the sheriff’s office may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, with regard to the second requestor, we will consider your remaining arguments against disclosure of the submitted information. Further, you have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted information is confidential under section 261.201 of the Family Code. Accordingly, we conclude the sheriff’s office must generally withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the first requestor claims a right of access to some of the information at issue pursuant to a court order. The first requestor included with one of her requests a court order showing the requestor represents an individual who is involved in a child custody lawsuit involving the child who is the subject of the submitted incident report and forensic interview. The court order further states that, pursuant to section 261.201(b), “[the requestor] will be granted access to review any and all videos of the forensic interviews of [the child].” Section 261.201(b) provides that information made confidential by section 261.201(a) must be released pursuant to a court order if certain requirements are met.

See Fam. Code § 261.201(b). Upon review, we find the sheriff's office may not withhold the submitted forensic interview from the first requestor under section 261.201(a). We also note although the sheriff's office asserts section 552.108 to withhold the forensic interview, a statutory right of access prevails over the Act's general exceptions to public disclosure. See, e.g., Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the first requestor's statutory access under section 261.201(b) of the Family Code prevails and the sheriff's office may not withhold the submitted forensic interview under section 552.108 of the Government Code. Accordingly, the sheriff's office must release the forensic interview to the first requestor in accordance with the court order pursuant to section 261.201(b) of the Family Code.<sup>1</sup> However, the sheriff's office must withhold the submitted incident report from the first requestor under section 552.101 of the Government Code in conjunction with 261.201(a) of the Family Code.<sup>2</sup>

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude release of the submitted information will 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). Accordingly, we find section 552.108(a)(1) 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. Gov’t Code § 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 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information subject to section 552.130 of the Government Code, but does include, among

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<sup>1</sup>We note, in this instance, the information to be released is generally confidential with respect to the general public. Thus, if the sheriff's office receives another request for this particular information from a different requestor, then the sheriff's office should again seek a decision from this office.

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

other items, the identities of arresting and investigating officers. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the sheriff's office may withhold the submitted information from the second requestor under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the basic information includes identifying information of a police officer working in an undercover capacity. You assert release of the officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer you have marked under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the submitted incident report from the first requestor under section 552.101 of the Government Code in conjunction with 261.201(a) of the Family Code and release the submitted forensic interview to the first requestor pursuant to section 261.201(b) of the Family Code. With regard to the second requestor, with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information to the second requestor, the sheriff's office must withhold the identifying information you have marked under section 552.152 of the Government Code.<sup>4</sup>

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.

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

<sup>4</sup>Because the second requestor has a special right of access to the information being released, 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. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of abuse or neglect has right of access to information otherwise confidential under section 261.201 (a) of the Family Code), (1)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure).

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 'JW', written over the word 'Sincerely,'.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/gw

Ref: ID# 752223

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)