



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2019

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

OR2019-15442

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# 769647.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified report and information regarding a specified address during a specified time period. You state 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."² Gov't

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. Section 552.101 encompasses information made confidential by 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 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find report number 19-8420 and related call slip #P190630443 were used or developed in an investigation of alleged or

suspected child abuse or neglect under chapter 261 of the Family Code. *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” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find the information at issue is subject to chapter 261 of the Family Code. However, we note the requestor’s client may be a parent, guardian, or managing conservator of the child victim listed in the information at issue, and is not alleged to have committed the abuse or neglect. As such, this requestor may have a right of access to report number 19-8420 and call slip #P190630443 pursuant to section 261.201(k). As we are unable to determine whether the requestor is a parent, guardian, or managing conservator of the child victim, we rule conditionally. If the requestor’s client is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then the sheriff’s office must withhold report number 19-8420 and call slip #P190630443 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ Conversely, if the requestor’s client is a parent, guardian, or managing conservator of the child victim, then the sheriff’s office may not withhold report number 19-8420 and call slip #P190630443 under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must still be withheld. *Id.* § 261.201(1)(3). Further, section 261.201(1)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(1)(2). Thus, in the event the requestor’s client is a parent, guardian, or managing conservator of the child victim, we will consider your remaining arguments against disclosure of the information at issue.

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 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 report number 19-8522 and call slip #P190640091 pertain to an active criminal investigation or prosecution. Based on your representation, we conclude the release of the information at issue 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 report number 19-8522 and call slip #P190640091.

³In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 the remaining information pertains to closed cases that did not result in convictions or deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is applicable to the remaining 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). We note basic information includes the identity of a complainant, but does not include complainant's home address and telephone number or motor vehicle record information. Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold report number 19-8522 and call slip #P190640091 under section 552.108(a)(1) of the Government Code and may withhold the remaining information under section 552.108(a)(2) of the Government Code.⁴ However, as previously noted, section 261.201(1)(3) states the identity of the reporting party must be withheld. *See* Fam. Code § 261.201 (1)(3). Thus, in releasing basic information, the sheriff's office must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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. The 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 find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public.

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

Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor's client is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then the sheriff's office must withhold report number 19-8420 and call slip #P190630443 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor's client is a parent, guardian, or managing conservator of the child victim, then, with the exception of basic information, the sheriff's office may withhold report number 19-8522 and call slip #P190640091 under section 552.108(a)(1) of the Government Code and may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code and common-law privacy.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 769647

Enc. Submitted documents

c: Requestor
(w/o enclosures)