



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2019

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

OR2019-18768

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# 774473.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for reports regarding the requestor and a named individual during a specified time period, including specified reports. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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. This exception encompasses information made confidential by statute, including section 48.101 of the Human Resources Code. Section 48.101 is applicable to information relating to abuse, neglect, or exploitation of elderly and disabled persons in certain facilities and provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under [chapter 48 of the Human Resources Code];
- (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 [chapter 48 of the Human Resources Code] or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with [chapter 48 of the Human Resources Code] and as provided by [the Texas Department of Family and Protective Services (“DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). You contend some of the submitted information is confidential under section 48.101. We note 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.¹ *See id.* §§ 48.151, .152, .252, .301. Thus, section 48.101 is generally not applicable to records of an investigation conducted by a police department. Upon review, we find you have not demonstrated any of the submitted information constitutes files, reports, records, communications, or working papers used or developed in an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Therefore, we conclude 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 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 [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.

¹In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

Fam. Code § 261.201(a). You contend some of the submitted information is confidential under section 261.201. However, upon review, we find you have not demonstrated the information at issue consists of a report of alleged or suspected child abuse or neglect, nor does the information reveal the identity of an individual who made a report of alleged or suspected child abuse or neglect for purposes of section 261.201(a)(1). *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 disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Furthermore, we find you have failed to demonstrate this information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Therefore, the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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. 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. In this instance, the requestor knows both the identity of the individual involved and the nature of one of the incidents at issue. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject individual’s common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

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: (1) 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 19-12716 and call slip number P190950747 relate to an ongoing criminal investigation. Based upon

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

this 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 19-12716 and call slip number P190950747.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than 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 report numbers 18-38423, 18-46628, and 19-14980, and call slip numbers P182920653, P183541037, and P191100975 pertain to concluded criminal investigations that did not result in conviction or deferred adjudication. Based upon your representation, we agree section 552.108(a)(2) is applicable to report numbers 18-38423, 18-46628, and 19-14980, and call slip numbers P182920653, P183541037, and P191100975.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 186-88; *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 report number 19-12716 and call slip number P190950747 under section 552.108(a)(1) of the Government Code and may withhold report numbers 18-38423, 18-46628, and 19-14980, and call slip numbers P182920653, P183541037, and P191100975 under section 552.108(a)(2) of the Government Code.³

We note portions of the basic information are subject to section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455. Upon review, we find the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the sheriff's office may withhold

³As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

report number 19-12716 and call slip number P190950747 under section 552.108(a)(1) of the Government Code and may withhold report numbers 18-38423, 18-46628, and 19-14980, and call slip numbers P182920653, P183541037, and P191100975 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.⁴

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 774473

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the basic information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987). Accordingly, if the sheriff's office receives another request for this same information from a different requestor, then the sheriff's office must again seek a ruling from this office.