



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2019

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

OR2019-30221

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# 793367.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to four specified reports and information pertaining to a specified address involving the requestor and a named individual. You state you released 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. This section encompasses information protected 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 Chapter 552, Government Code, 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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Report numbers 18-18663, 18-13787, and 19-8676 were used or developed in an investigation of alleged or suspected child abuse or neglect by the sheriff's office. *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 this information is subject to chapter 261 of the Family Code. We note, and you acknowledge, the requestor is a parent of the child victim listed in the information. However the requestor was suspected of committing the alleged or suspected abuse or neglect in report number 18-13787. Therefore, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the sheriff's office must withhold report number 18-13787 under section 552.101 of the Government Code in conjunction section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Nevertheless, the requestor is not alleged to have committed the abuse or neglect in report numbers 18-18663 and 19-

¹ As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

8676. Thus, pursuant to section 261.201(k), report numbers 18-18663 and 19-8676 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your arguments under section 552.108 of the Government Code for report numbers 18-18663 and 19-8676. The remaining report is not confidential under section 261.201(a) of the Family Code and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

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 relates to closed criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.²

In summary, the sheriff's office must withhold report number 18-13787 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold remaining information.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.

² As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

³ Because the requestor has a special right of access to some of the basic information being released, if the sheriff's office received another request for this information from an individual who does not have such a right of access, the sheriff's office must again seek a ruling from this office. *See Fam. Code* § 261.201(k)

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal flourish extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 793367

Enc. Submitted documents

c: Requestor
(w/o enclosures)