



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2019

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

OR2019-30526

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# 793838.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. The sheriff's office claims 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 claimed exceptions 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 section 261.201(a) of the Family Code, which provides as follows:

[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.

Fam. Code § 261.201(a). The sheriff's office asserts the submitted information is confidential under section 261.201. However, we find the sheriff's office has not established this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or consists of a report of alleged or suspected abuse or neglect. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Therefore, the submitted information 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 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.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the submitted information pertains to a case that resulted in a deferred prosecution agreement, and the terms of the deferred prosecution agreement have been completed without the case concluding in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the names of the arresting and investigating officer. Thus, with the exception of basic information, the sheriff's office may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.152 of the Government Code provides the following:

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. The sheriff's office represents release of the basic information that identifies undercover officers, which it has marked under section 552.152, would subject the officers to a substantial threat of physical harm. Upon review, we find the sheriff's office has demonstrated release of the information at issue would subject the officers to a

substantial threat of physical harm. Therefore, the sheriff's office must withhold the basic information it has marked under section 552.152 of the Government Code.

We note the requestor is with the Federal Bureau of Investigation's National Instant Criminal Background Check System. Section 411.089(a) of the Government Code provides "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety ("DPS")] any criminal history record information [{"CHRI"}] maintained by [DPS] about a person." See Gov't Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS] CHRI maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." See *id.* § 411.082(2). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a "criminal justice agency," the requestor is authorized to obtain CHRI concerning the named individual from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. See Gov't Code §§ 411.083(c), .087(a)(2).

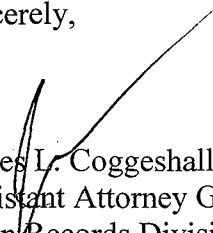
We understand the requestor represents a criminal justice agency as defined by section 411.082 and intends to use the CHRI for a criminal justice purpose. A statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. See 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). Thus, the city must release the CHRI.

In summary, the city must release the CHRI. With the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff's office must withhold the information it has marked under section 552.152 of the Government Code.

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 <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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 793838

Enc. Submitted documents

c: Requestor
(w/o enclosures)