



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2020

Ms. Angela Albers
Wood County Criminal District Attorney
Wood County
P.O. Box 689
Quitman, Texas 75783

OR2020-01974

Dear Ms. Albers:

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# 807275

The Wood County District Attorney's Office (the "district attorney's office") received a request for documents pertaining to a named individual. You state the district attorney's office will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.103 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 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 The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as a 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). As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the district attorney’s office must withhold the information we marked 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).

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 Exhibit C relates to pending criminal prosecutions. Based on this representation, we conclude the release of Exhibit C 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, 184–85 (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 Exhibit C. Accordingly, the district attorney’s office may withhold Exhibit C under section 552.108(a)(1) of the Government Code.²

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain enumerated individuals when that information is held by a

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

governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find some of the remaining information may consist of personal information of a peace officer. Thus, if the individual whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold the marked cellular telephone number under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

In summary, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district attorney's office may withhold Exhibit C under section 552.108(a)(1) of the Government Code. If the individual whose information is at issue elects to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold the marked cellular telephone number under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The district attorney's office must release the remaining information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 807275

Enc. Submitted documents

c: Requestor
(w/o enclosures)