



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Andrew Wipke  
Assistant County Attorney  
Fort Bend County Sheriff's Office  
401 Jackson Street, 3<sup>rd</sup> Floor  
Richmond, Texas 77469

OR2020-07197

Dear Mr. Wipke:

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# 815720.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports pertaining to the requestor's daughter for a specified period of time. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 other statutes. Section 261.201 of the Family Code 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:

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<sup>1</sup> We 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 those records contain substantially different types of information than that submitted to this office.

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 261.201(a), (k), (l). You assert report number 19-32340 is confidential pursuant to section 261.201(a). However, upon review we find you have not demonstrated report number 19-32340 consists of a report of alleged or suspected child abuse or neglect, nor does this 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 section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Furthermore, we find you have failed to demonstrate report number 19-32340 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 report number 19-32340 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we find some of the remaining information was used or developed in investigations of

alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a), 261.001(1), (4). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor is a parent of the child victim listed in the information at issue. However, we note the requestor is alleged to have committed the suspected abuse or neglect in some of the reports at issue. Thus, the requestor does not have a right of access to report numbers 19-18227, 19-18632, and 19-33283 under section 261.201(k). *See id.* § 261.201(k). Therefore, the sheriff's office must withhold report numbers 19-18227, 19-18632, and 19-33283 information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note, however, the requestor is not alleged to have committed the suspected abuse or neglect in report numbers 19-32872, 19-32960, 19-42150, and 19-42620. Thus, pursuant to section 261.201(k), report numbers 19-32872, 19-32960, 19-42150, and 19-42620 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See* Fam Code. § 261.201(k). However, section 261.201(1)(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(1)(2). Accordingly, we will consider whether report numbers 19-32872, 19-32960, 19-42150, and 19-42620 are otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

*Id.* § 58.008(b); *see also id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Some of the remaining information involves a juvenile offender, so as to fall within the scope of section 58.008(b).

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

It does not appear any of the exceptions in section 58.008 apply. Accordingly, the sheriff's office must withhold report number 19-42150 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, we note the requestor is a parent or guardian of the juvenile offender in report numbers 19-31897, 19-32168, 19-32340, 19-32996, and 19-42000. Thus, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Accordingly, the sheriff's office may not withhold report numbers 19-31897, 19-32168, 19-32340, 19-32996, and 19-42000 from this requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Further, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.008(e)(2). Thus, we will consider the remaining arguments of the sheriff's office under section 552.108 of the Government Code against release of report numbers 19-31897, 19-32168, 19-32340, 19-32996, and 19-42000.

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 19-42620 pertains to a pending criminal investigation or prosecution. Based on 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 19-42620.

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 report numbers 19-20014, 19-21150, 19-31897, 19-32168, 19-32340, 19-32404, 19-32872, 19-32960, 19-32996, 19-38784, and 19-42000 relates to closed criminal investigations that did not result in convictions or deferred adjudications. Thus, section 552.108(a)(2) is applicable to report numbers 19-20014, 19-21150, 19-31897, 19-32168, 19-32340, 19-32404, 19-32872, 19-32960, 19-32996, 19-38784, and 19-42000.

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*. *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). We note basic information does not include dates of birth,

social security numbers of victims or suspects, or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the sheriff's office may withhold report number 19-42620 under section 552.108(a)(1) of the Government Code and report numbers 19-20014, 19- 21150, 19-31897, 19-32168, 19-32340, 19-32404, 19-32872, 19-32960, 19-32996, 19- 38784, and 19-42000 under section 552.108(a)(2) of the Government Code.

In summary, the sheriff's office must withhold report numbers 19-18227, 19-18632, 19- 32340, and 19-33283, information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold report number 19-42150 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic information, which must be released, the sheriff's office may withhold report number 19-42620 under section 552.108(a)(1) of the Government Code and report numbers 19-20014, 19- 21150, 19-31897, 19-32168, 19-32340, 19-32404, 19-32872, 19-32960, 19-32996, 19- 38784, and 19-42000 under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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,



Pearlie Gault  
Attorney  
Open Records Division

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<sup>3</sup> We 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), (b) (individual has special right of access to information that relates to herself and is protected by laws intended to protect his privacy interests, and governmental body may not deny access on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, if the sheriff's office receives another request for this same information from a different requestor, it must again seek a ruling from this office.

Mr. Andrew Wipke - Page 6

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)