



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2020

Ms. Melanie Bybee
Administrative Assistant
Somervell County Sheriff's Office
P.O. Box 3268
Glen Rose, Texas 76043

OR2020-14952

Dear Ms. Bybee:

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# 831526.

The Somervell County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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. Section 552.101 encompasses information protected by other statutes, such as 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 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.

¹ Although you also claim an exception under section 552.021 of the Government Code, we note this section is not an exception to disclosure under the Act, and provides only for the availability of public information. See Gov't Code § 552.021.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

...

(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), (h), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). However, we note the information at issue is related to an investigation of alleged or suspected child abuse or neglect that occurred in a facility that may be regulated under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of child abuse or neglect that occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42. *Id.* § 261.201(h). Thus, we must rule conditionally. If the facility at issue is regulated under chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to the investigation at issue, and the sheriff’s office may not withhold any of the submitted information under section 552.101 of the Government Code on that basis. If the facility at issue is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the submitted information is subject to section 261.201. In this instance, however, the requestor is a parent of the child victim listed in the information, and the requestor is not alleged to have committed the abuse or neglect. As such, this requestor has a right of access to the information at issue pursuant to section 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 be redacted. *Id.* § 261.201(1)(2). Therefore, we will address your argument against disclosure of the information at issue.

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. 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); Open Records Decision No. 434 (1986). You state the submitted information pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted 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 to this requestor, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/rm

² In this instance, the requestor may have a right of access to the basic information being released pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (1)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure). If the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ms. Melanie Bybee - Page 4

Ref: ID# 831526

Enc. Submitted documents

c: Requestor
(w/o enclosures)