



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 30, 2020

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

OR2020-19095

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# 837634.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all reports filed by the requestor regarding a specified address during a specified time period. You state the sheriff's office will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</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 section 58.008 of the Family Code, which provides, in part, the following:

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<sup>1</sup> Although the sheriff's office does not raise section 552.136 of the Government Code in its brief, we understand the sheriff's office to raise this exception based on its markings.

<sup>2</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.

(b) Except as provided by Subsection (c), 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

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

Fam. Code § 58.008(b), (d)(4), (e)(2); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find some of the submitted reports that the sheriff's office has indicated under section 58.008(b) of the Family Code involve juvenile offenders, so as to fall within the scope of that section. Therefore, the sheriff's department must withhold the

information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Government Code.<sup>3</sup>

However, the requestor is a parent of the juvenile offenders at issue in the remaining reports we indicated. For purposes of section 58.008(d)(4), the term “parent” means “the mother or the father of a child, but does not include a parent whose parental rights have been terminated.” *See id.* § 51.02(9). Although the requestor is a parent of the juvenile offenders in the remaining information at issue, the requestor’s parental rights regarding these juvenile offenders may have been terminated before the sheriff’s office received the request for information. *See id.* Therefore, we must rule conditionally. If the requestor was not a parent of the juvenile offenders at issue for purposes of section 51.02(9) of the Family Code when she made her request for information, then the sheriff’s office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor was a parent of the juvenile offenders at issue for purposes of section 51.02(9) when she made her request, then she has access to the information pursuant to section 58.008(d), and the sheriff’s office may not withhold this information from her on that ground. *See id.* § 58.008(d). Nevertheless, section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). You also raise sections 552.101, 552.108, and 552.130 of the Government Code for the information at issue. Therefore, to the extent the requestor is a parent of the juvenile offenders at issue for purposes of section 51.02(9) when she made her request, we will address the applicability of these exceptions to the information at issue. However, we find you have failed to demonstrate the remaining information at issue identifies an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the sheriff’s office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses 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 [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

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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

(3) the identity of the person who made the report.

*Id.* § 261.201(a), (k), (l)(2), (3). Upon review, we find some of the remaining information, which we marked and indicated, was used or developed in investigations 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 section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information is within the scope of section 261.201(a). Therefore, the sheriff’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.<sup>4</sup> Although the requestor is a parent of the juvenile victims in some of the remaining information at issue and is not alleged to have committed the alleged abuse, the requestor’s parental rights regarding these juveniles may have been terminated before the sheriff’s office received the request for information. *See id.* § 101.024 (“parent” for purposes of title 5 of Family Code “does not include a parent as to whom the parent-child relationship has been terminated.”). Therefore, we must rule conditionally. If the requestor was not a parent of the juvenile victims at issue for purposes of section 101.024 of the Family Code when she made her request for information, then the sheriff’s office must withhold the information we indicated under section 552.101 of the

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor was a parent of the juvenile victims for purposes of section 101.024 when she made her request, then the sheriff's office may not withhold this information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). In that event, the sheriff's office must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Additionally, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). You also raise sections 552.101, 552.108, and 552.130 of the Government Code for the information at issue. Therefore, in the event the requestor was a parent of the juvenile victims for purposes of section 101.024 when she made her request, we will consider the applicability of these exceptions to the information at issue. However, you have failed to demonstrate the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect or consists of a report of alleged or suspected abuse or neglect. Accordingly, we conclude this information is not within the scope of section 261.201. Therefore, the sheriff's office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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). The sheriff's office states the information we indicated pertains to active criminal investigations or prosecutions. 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 the information we indicated.

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). The sheriff's office states the information we marked and indicated pertains to closed cases that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information we marked and indicated.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976). We note basic information does not include dates of birth, motor vehicle record information encompassed by section 552.130 of the Government Code, or access device numbers encompassed by section 552.136 of the Government Code. See ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff’s office may withhold the information we marked under section 552.108(a)(2) of the Government Code.<sup>5</sup> Additionally, if the requestor is a parent of the juvenile offenders in the information subject to section 58.008 of the Family Code for purposes of section 51.02(9) of the Family Code or a parent of the child victims in the information subject to section 261.201 of the Family Code for purposes of section 101.024, then, with the exception of the basic information, the sheriff’s office may withhold the information we indicated under section 552.108(a)(1) of the Government Code and may withhold the information we indicated under section 552.108(a)(2) of the Government Code.<sup>6</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. However, the requestor may be the authorized representative of the individual at issue, and may have a right of access to information pertaining to the individual at issue that would otherwise be confidential under common-law privacy. See Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of the individual at issue, then the sheriff’s office may not withhold the information we have marked under section 552.101 on the basis of common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, the sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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<sup>5</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>6</sup> In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

In summary, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The sheriff’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. With the exception of basic information, the sheriff’s office may withhold the information we marked under section 552.108(a)(2) of the Government Code. If the requestor was not a parent of the juveniles at issue in the remaining information for purposes of sections 51.02(9) and 101.024 of the Family Code when she made her request for information, then the sheriff’s office must (1) withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; (2) withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (3) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) release the remaining information. If the requestor was a parent of the juveniles at issue in the remaining information for purposes of sections 51.02(9) and 101.024 when she made her request for information, then the sheriff’s office (1) must withhold the information we marked under section 261.201(1)(3) of the Family Code; (2) with the exception of the basic information, may withhold the information we indicated under section 552.108(a)(1) of the Government Code and may withhold the information we indicated under section 552.108(a)(2) of the Government Code; (3) must withhold the information we marked under section 552.101 of the Government Code in conjunction with

common-law privacy if the requestor is not acting as the authorized representative of the individual at issue; and (4) 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,

Sean McCormick  
Assistant Attorney General  
Open Records Division

SMC/be

Ref: ID# 837634

Enc. Submitted documents

c: Requestor  
(w/o enclosures)