



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2020

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite # 300
Conroe, Texas 77301

OR2020-24797

Dear Mr. Anderson:

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# 846566 (ORR 20PIA236).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual, including five specified reports. You claim the submitted information is excepted from disclosure under sections 552.101 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." Gov't Code § 552.101. This section 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) 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). Upon review, we find report number 99A012454 was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *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 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude report number 99A012454 is confidential pursuant to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code on that basis.¹ *See* Open Records Decision No. 440 at 2 (1986). However, we find you have failed to demonstrate any of the remaining information was used or developed in an investigation of alleged or suspected child abuse, consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code, or reveals the identity of an individual who made a report of alleged or suspect child abuse. Therefore, we conclude section 261.201 is not applicable to the remaining information, and it may not be withheld under section 552.101 on that basis.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to 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 that 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 the remaining information pertains to closed cases that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information. Additionally, we note this information does not contain criminal history record information ("CHRI") of the named individual in the request for information. Therefore, we do not address whether the requestor, who is a representative of the Office of Capital and Forensic Writs (the "OCFW"), has a right of access to CHRI under sections 411.087 and 411.1272 of the Government Code. *See* Gov't Code §§ 411.082(a) (2), .1272.

We note, 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 the types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may generally withhold the remaining information under section 552.108(a)(2) of the Government Code.

However, as previously noted, the requestor is a representative of the OCFW. Section 411.1272 of the Government Code provides:

The [OCFW] and a public defender's office are entitled to obtain from the [Department of Public Safety ("DPS")] [CHRI] maintained by [DPS] that relates to a criminal case in which an attorney compensated by the [OCFW] . . . has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), 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.

Gov't Code § 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).

Accordingly, the requestor is authorized to obtain the CHRI in the information at issue from the sheriff's office pursuant to sections 411.0872(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed. *See id.* §§ 411.082(a) (2), .1272. Although the sheriff's office raises section 552.108 of the Government Code for this information, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, if the sheriff's office determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must release the information that shows the type of allegations made and whether there was an arrest,

information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, with the exception of basic information, the sheriff's office may withhold the remaining information at issue under section 552.108(a)(2). Conversely, if the sheriff's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then with the exception of basic information, the sheriff's office may withhold the information at issue under section 552.108(a)(2) of the Government Code.

In summary, the sheriff's office must withhold report number 99A012454 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 generally withhold the remaining information under section 552.108(a)(2) of the Government Code; however, if the sheriff's office determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff's office must also release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to sections 411.087 and 411.1272 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,

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/gw

Ref: ID# 846566

Enc. Submitted documents

c: Requestor
(w/o enclosures)