



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2020

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

OR2020-25297

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# 845346 (MCSO ORR File 20PIA217).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a named individual. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims 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 section 58.008 of the Family Code, which provides, in part:

(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.

Fam. Code § 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). We find report number 10A008406 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the sheriff’s office must withhold report number 10A008406 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in 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:

(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.

*Id.* § 261.201(a). Some of the remaining information was used or developed in investigations conducted by the sheriff’s office of alleged or suspected child abuse or neglect. *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). Accordingly, we find this information is

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<sup>1</sup> As our ruling is dispositive, we do not address the sheriff’s office’s submitted arguments against disclosure of this information. Additionally, we note report number 10A008406 does not contain criminal history record information (“CHRI”) of the individual named in the request for information. Therefore, we do not address whether the requestor, who is an investigator with 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* §§ 411.087(a)(2), .1272.

subject to chapter 261 of the Family Code. As the sheriff's office does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold report numbers 99A012454 and 11A010653 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). However, upon review, we find the sheriff's office has failed to demonstrate the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the sheriff's office has not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). See Fam. Code § 261.001(1), (4). Therefore, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 remaining information pertains to concluded investigations that did not result in convictions or deferred adjudications. Based on the sheriff's office's representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, we note 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 an investigator with the OCFW. Section 411.1272 of the Government Code provides as follows:

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

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<sup>2</sup> As our ruling is dispositive, we do not address the sheriff's office's remaining argument against disclosure of this information. Additionally, we note report numbers 99A012454 and 11A010653 do not contain CHRI of the individual named in the request for information. Therefore, we do not address whether the requestor has a right of access to CHRI under sections 411.087 and 411.1272 of the Government Code. See *id.* §§ 411.087(a)(2), .1272.

Gov't Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(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 the [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.

*Id.* § 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 department pursuant to sections 411.087(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.* §§ 411.087(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).* Therefore, if the sheriff’s office determines the remaining information relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff’s office must release CHRI from this information pursuant to section 411.1272 of the Government Code. However, if the sheriff’s office determines the remaining information does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff’s office need not release CHRI.

In summary, the sheriff’s office must withhold report number 10A008406 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 report numbers 99A012454 and 11A010653 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which the sheriff’s office must release, the sheriff’s office may withhold the remaining information under section 552.108(a)(2) of the Government Code; however, if the sheriff’s office determines the this information relates to a criminal case in which an attorney compensated by the OCFW is appointed, then the sheriff’s office must release CHRI from this information pursuant to section 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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/gw

Ref: ID# 845346

Enc. Submitted documents

c: Requestor  
(w/o enclosures)