



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2022

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

OR2022-11656

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# 943349.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information 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 claimed exceptions 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 incident report number 18-2674 was used or developed in an investigation under chapter 261. *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, the information is within the scope of section 261.201 of the Family Code. The sheriff’s office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the sheriff’s office must withhold incident report number 18-2674 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual’s privacy. The requestor knows the identity of the individual involved and the nature of the incident in incident report number 18-2671. Therefore, withholding only the individual’s identity or certain details of this incident from the requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff’s office must generally withhold incident report number 18-2671 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

However, the requestor may represent the named individual. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person’s representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov’t Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor represents the named individual, then the requestor has a right of access to this individual’s private information pursuant to section 552.023 of the Government Code, and the sheriff’s office may not withhold information pertaining to the named individual under section 552.101 in conjunction with common-law privacy.

¹ As our ruling is dispositive, we do not address the arguments of the sheriff’s office to withhold this information.

² As our ruling is dispositive, we do not address the other arguments of the sheriff’s office to withhold this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The sheriff's office states the remaining information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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), and includes a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.³

As discussed above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the basic information at issue, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor represents the named individual, then the requestor has a right of access to the named individual's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).

In summary, the sheriff's office must withhold incident report number 18-2674 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor does not represent the named individual, then the sheriff's office (1) must withhold incident report number 18-2671 in its entirety under section 552.101 in conjunction with common-law privacy; (2) with the exception of basic information, may withhold incident report number 18-2818 under section 552.108(a)(2) of the Government Code; and (3) in releasing basic information from incident report number 18-2818, must withhold the information we have marked under section 552.023 of the Government Code. If the requestor represents the named individual, then the sheriff's office must release the basic information from incident report numbers 18-2671 and 18-2818, but may withhold the remaining information in these reports under section 552.108(a)(2) 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.

³ As our ruling is dispositive, we do not address the other arguments of the sheriff's office to withhold this information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 943349

Enc. Submitted documents

c: Requestor
(w/o enclosures)