



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1998

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR98-2570

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119311.

The Police Department of the City of Victoria (the "department") received a request for Incident Report Nos. 9815348 and 9813121. You claim that the requested 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.

After reviewing the submitted information, we conclude that all information related to Report No. 9813121 is confidential under section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides:

The 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 [of a child] 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.

The information at issue resulted from an investigation of the alleged assault of a child. We are not aware of any rules promulgated by the department, which is the investigating agency, which permit the dissemination of information about the assault of children. Accordingly, the submitted information concerning Incident Report No. 9813121 is made confidential in its entirety by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. See Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

You contend that information concerning Incident Report No. 9815348 must not be disclosed under section 261.201 of the Family Code, but the offense in this case does not appear to involve alleged abuse or neglect of a child and, therefore, is not covered under section 261.201 of the Family Code. You contend that, except for the categories of information specifically made public in *Houston Chronicle Publishing Company 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), the requested information is excepted from required public disclosure pursuant to section 552.108 of the Government Code.¹

¹Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

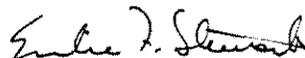
(3) the internal record or notation:

Because you have informed us that the records at issue in Incident Report No. 9815348 pertain to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. You therefore may withhold most of the requested information at this time pursuant to section 552.108.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The city must release these types of information in Incident Report 9815348 in accordance with *Houston Chronicle Publishing Company 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). By way of summary, the city must release basic information about Incident Report 9815348 and it must not release any information related to Incident Report No.9813121. We note that the first page of the report does not contain a detailed description of the incident, which is public front page information and must be disclosed. Open Records Decision No. 127 (1976). Front page information must be disclosed wherever it is found. *Id.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/nc

Ref.: ID# 119311

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Enclosures: Submitted documents

cc: Mr. Ramon Rodriguez
P.O. Box 156
Beeville, Texas 78102
(w/o enclosures)