OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 5, 2001

Mr. Don Hatcher
Chief of Police
City of Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2001-4480

Dear Mr. Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152848.

The City of Leander Police Department (the "department") received a request for a copy of case/incident number 23440. You state that incident #23416 is also related to the request. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[1] Section 261.201 provides in pertinent part:

> (a) 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 made under this chapter and the identity of the person making the report; and

[1] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected from disclosure by other statutes.

> (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. You state that section 261.201 applies to the submitted information "[b]ecause of the nature of family violence." However, section 261.201 of the Family Code pertains to investigations of child abuse or neglect. Since the submitted information does not pertain to an investigation of child abuse or neglect, section 261.201 of the Family Code is inapplicable. Accordingly, we conclude that the submitted information is not confidential under section 261.201 of the Family Code and, thus, may not be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt* , 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal investigation. Therefore, we conclude that the release of the submitted information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be 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). Accordingly, with the exception of basic information, you may withhold the submitted information from disclosure pursuant to section 552.108 of the Government Code. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152848

Enc. Submitted documents

cc: Ms. Janet Smith
2008 Marysol Trail
Cedar Park, Texas 78613
(w/o enclosures)