



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2005

Ms. April M. Virnig
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2005-04405

Dear Ms. Virnig:

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# 224545.

The City of Richland Hills (the "city"), which you represent, received a request for all records regarding an alleged assault and all records relating to the dispatch of police officers to a specific address during a certain time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that a portion of the submitted information is confidential by law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(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:

or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the submitted information relates to a pending criminal case. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, the city may withhold the submitted information from disclosure based on section 552.108(a)(1). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007. Because basic information described in *Houston Chronicle* does not include information covered by section 552.130, we need not consider your arguments concerning that exception.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

(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). We note that the submitted offense report pertains to the assault of one adult by another. However, in your initial correspondence to this office, you stated that “[t]he requested information involves a charge of injury to a child, which constitutes ‘abuse’ for purposes of Section 261.201 of the Family Code and is generally confidential by law.”

Pursuant to section 552.303 of the Government Code, we requested that you provide this office with additional information explaining how this information relates to an investigation conducted under section 261.201. In your response, you stated that the documents that you claim are confidential under section 261.201 were

produced by the victim in the alleged *assault case* that is a pending criminal case that has been referred to the Tarrant County District Attorney’s office for prosecution. The documents in question relate to a previous charge involving an injury to a child, and were provided to the Tarrant County District Attorney’s office to use as evidence in the ongoing *assault prosecution*. (Emphasis added.)

As noted above, the submitted assault case involves an adult victim. You have not identified or provided any additional information regarding the “previous charge involving injury to a child,” nor have you explained how the documents you have marked were used in or otherwise relate to such an investigation. As you have failed to demonstrate, and the documents themselves do not indicate, how the information at issue relates to an investigation conducted under chapter 261 of the Family Code, we are unable to conclude that the information at issue was “used or developed in an investigation under [chapter 261] or in providing services as a result of an investigation.” Fam. Code § 261.201(a). Thus, we find that these portions of the submitted information, which you have labeled, are not within the scope of section 261.201 of the Family Code. Accordingly, the city may not withhold this information under section 552.101 of the Government Code as information made confidential by law.

Next, we address your claim regarding section 552.108 of the Government Code. This section excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation,

Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James A. Person III
Assistant Attorney General
Open Records Division

JP/seg

Ref: ID# 224545

Enc. Submitted documents

c: Mr. Scott Brown
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(w/o enclosures)