



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 17, 2008

Mr. Samuel Hawk
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
1400 South Lamar, 1st Floor
Dallas, Texas 75215

OR2008-15717

Dear Mr. Hawk:

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# 328579.

The Dallas Police Department (the "department") received a request from the Texas Alcoholic Beverage Commission for all police reports regarding two named locations for use in an investigation. You state you have released most of the responsive information to the requestor. You claim that the submitted 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.

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 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:

(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, 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). You state that report 84108-V pertains to an alleged injury to a child. Upon review, we find report 84108-V is a report used or developed in an investigation under chapter 261. *See id.* § 261.001(C) (definition of child abuse includes physical injury that results in substantial harm to the child or the genuine threat of substantial harm from physical injury to the child); *see also 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). Thus, we find report 84108-V is within the scope of section 261.201 of the Family Code and may be released only in accordance with that provision.

The requestor has not directed our attention to any federal or state law that would authorize the release of report 84108-V in this instance. Furthermore, you have not informed us of any rules adopted by the department authorizing the release of the report in this type of situation. We therefore conclude that the department must withhold report 84108-V in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Section 552.108(a)(1) excepts from 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, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information in report 99934-V that the department seeks to withhold under section 552.108. You state that report 99934-V is related to a pending case. Based on this representation, we conclude that the release of this information in report 99934-V would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

¹As our ruling in regards to report 84108-V is dispositive, we do not address your common-law privacy argument to withhold this information.

We note, however, that the requestor in this instance is with the Texas Alcoholic Beverage Commission, and is seeking the requested information in his official capacity. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion Nos. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Thus, under the interagency transfer doctrine, the department has the discretion to release to this requestor the information that you have marked in report 99934-V that is excepted under section 552.108 of the Government Code, without waiving that exception to the public disclosure of that information. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department may withhold the information you have marked in report 99934-V under section 552.108(a)(1).

In summary, the department must withhold report 84108-V in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Pursuant to the interagency transfer doctrine, the department has the discretion to release the information that you have marked in report 99934-V under section 552.108 of the Government Code. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department may withhold the information you have marked in report 99934-V pursuant to section 552.108(a)(1) of the Government Code. The remaining submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 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 challenge 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 Office of the Attorney General 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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 328579

Enc. Submitted documents

cc: Requestor
(w/o enclosures)