



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-06080

Dear Ms. Aguilar:

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# 342291.

The Corpus Christi Police Department (the "department") received a request for information relating to a specified incident involving a named individual. 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 information you submitted.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 40.005 of the Human Resources Code and section 745.8485 of title 40 of the Texas Administrative Code. Section 40.005 authorizes the Texas Department of Family and Protective Services ("DFPS") to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect and provides in part:

- (a) [DFPS] shall establish and enforce rules governing the custody, use, and preservation of [DFPS] records, papers, files, and communications.

(b) [DFPS] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a [DFPS] service or to an investigation the [DFPS] conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of [DFPS] programs and must comply with applicable state and federal law and [DFPS] rules.

Hum. Res. Code § 40.005. In accordance with section 40.005, DFPS promulgated section 745.8485 to make child care facility license investigations confidential. Section 745.8485 provides in part:

(c) The following information relating to a completed investigation of child abuse or neglect is confidential and not available to the general public, except as provided under this chapter and applicable federal or state law:

- (1) The description of the allegation of child abuse or neglect;
- (2) The identity of the person making the allegation; and
- (3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation.

40 T.A.C. § 745.8485(c). We note that the submitted information was created and is maintained by the department and is related to an investigation conducted by the department. Section 745.8485 is applicable only to investigatory records used or developed by DFPS in an investigation conducted by DFPS. *See id.* § 745.8485(c); *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). You inform us that the submitted information was referred to DFPS for use in an investigation of alleged or suspected child abuse or neglect at a child day-care facility. Moreover, the submitted information reflects that DFPS also investigated the incident to which the information pertains. You do not inform us, however, and the information at issue does not otherwise reveal whether DFPS used the submitted information in its investigation. Nevertheless, we conclude that to the extent that DFPS used the submitted information in its investigation, the department must withhold any such information under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code. To the extent that the submitted information was not used in DFPS's investigation, the information is not confidential under section 745.8485 and may not be withheld on that basis under section 552.101.

To the extent that section 552.101 is not applicable to the submitted information, we address your claim under section 552.108 of the Government Code. 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information is related to a pending criminal case. Based on your representation, we conclude that section 552.108(a)(1) is generally 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).

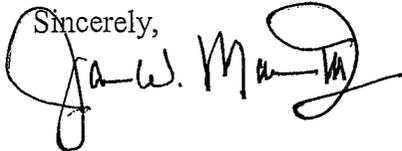
We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information includes, among other things, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the submitted information involves a child whose identity must be withheld from the public under section 552.101 in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).¹ We have marked the types of information that the department must withhold on that basis. With the exception of those types of information, the department must release basic information in accordance with section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. *See* ORD 127 at 3-4. The department may withhold the rest of the submitted information under section 552.108(a)(1).

In summary: (1) the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code to the extent that the information was used in DFPS’s investigation of the incident to which the information pertains; and (2) to the extent that the submitted information was not used in DFPS’s investigation, so as not to be confidential under section 552.101, the department may withhold the information under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c). In releasing basic information, the department must withhold the marked information that identifies the child involved under section 552.101 in conjunction with common-law privacy.

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.

¹Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and not a matter of legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 342291

Enc: Submitted documents

c: Requestor
(w/o enclosures)