



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. W. Lee Auvenshine
Assistant Ellis County & District Attorney
Ellis County & District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-12200

Dear Mr. Auvenshine:

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# 354104.

The Ellis County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified incident. 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The sheriff need not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.101 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 protected 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, 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). The submitted report pertains to an investigation of an unexplained death. Although you contend that the submitted information is subject to section 261.201, we find that you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Consequently, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also raise section 552.101 in conjunction with Subchapter E of chapter 264, which applies to children’s advocacy centers. *Id.* §§ 264.401-.411. Section 264.408 of the Family Code provides in relevant part:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Fam. Code § 264.408. Thus, section 264.408 provides that information used or developed in providing services under chapter 264, which concerns child welfare services, is confidential. We note that the submitted information consists of a report generated by the sheriff that pertains to an unexplained death. Although you contend that the submitted

information is subject to section 264.408, you do not explain, and the documents themselves do not reflect, how this information pertains to the provision of services by a child advocacy center under chapter 264 of the Family Code. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code.

You also raise section 552.108(a)(1) of the Government Code as an exception to disclosure for the submitted information. 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 state that the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude that release of the information at issue 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. 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). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to the submitted information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the submitted information from disclosure under section 552.108(a)(1). As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.

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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall

Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 354104

Enc. Submitted documents

c: Requestor
(w/o enclosures)