



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi, Legal Department
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-12529

Dear Mr. Bounds:

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# 354565.

The City of Corpus Christi (the "city") received a request for disciplinary records, incident reports, and other information related to a specified shooting incident and the police officers involved in the incident.¹ You state that the city will release some information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Section 261.201 of the Family Code provides in relevant part:

¹We note that the requestor made his request on June 19, 2009, and narrowed his request later that same day.

²You state that the city withdraws its previously asserted claims under sections 552.102, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.147 of the Government Code.

(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). Upon review, we find that the information you have marked under section 261.201 consists of a report used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, this report falls within the scope of section 261.201. You have not indicated that the city has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, we conclude that the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).*³

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has determined that common-law privacy generally protects the identities of juvenile offenders. *See Open Records Decision No. 384 (1983); cf. Fam. Code § 58.007(c).* Furthermore, this office has found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394 (1983); cf. Fam. Code § 261.201.* Based on your arguments and our review of the information at issue, we agree that the city must withhold most of the information you have marked under section 552.101 in conjunction with common-law privacy. However, the information we have marked for release does not identify the juvenile victim or the juvenile offender. Therefore, the city may not withhold this information under section 552.101 in conjunction with common-law privacy.

³As our ruling is dispositive with regard to this information, we need not address your argument under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.108(a)(1) of the Government Code 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 information you have marked under section 552.108(a)(1) relates to a pending criminal investigation. Based on this representation and our review, we conclude that the release of this information 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). Accordingly, section 552.108(a)(1) is generally applicable to the information you have marked under this exception.

However, as you acknowledge, 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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.⁴

In summary: (1) the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) except for the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code; and (4) the city must release the remainder of the submitted information.⁵

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.

⁴As our ruling is dispositive with regard to this information, we need not address your argument under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

⁵We note that basic information includes the social security number of an arrested person. However, the city may withhold a living person’s social security number without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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 'RTM', written over a horizontal line.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 354565

Enc. Submitted documents

cc: Requestor
(w/o enclosures)