



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-13068

Dear Ms. Sandoval-Walker:

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# 355617.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim 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. You contend the submitted information is made confidential under section 261.201 of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, 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.

....

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended* by Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 (to be codified as an amendment of Fam. Code § 261.201(a)); Fam. Code § 261.201(h). You assert the submitted information was used or developed in an investigation of alleged child abuse. However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. Fam. Code § 261.201(h). We note the incident at issue allegedly occurred at a child care facility that is regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. We, therefore, conclude section 261.201 is not applicable to the investigation at issue, and we determine the department may not withhold the submitted information under section 552.101 on that basis.

You also claim section 552.108 of the Government Code 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). Generally, 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 the submitted information relates to an ongoing criminal investigation. Based upon your representation and our review, we conclude the release of the submitted 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. 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). Thus, we agree section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 of the Government Code 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. Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 355617

Enc. Submitted documents

c: Requestor
(w/o enclosures)