



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-14055

Dear Mr. Reyna:

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# 357319 (COSA File No. 2009-3939).

The San Antonio Police Department (the "department") received a request for a specified report. You claim 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 some of the submitted information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of the information marked as non-responsive, and you need not release such information in response to the request.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

- (a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

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 and Act of June 3, 2009, 81st Leg., R.S., S.B. 1182, § 13 (to be codified as amendments of Fam. Code § 261.201). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of this section); *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). Upon review, we agree case number 90-398836/01 is generally confidential under

section 261.201 of the Family Code. Although you contend that the submitted police report survey also pertains to an investigation of alleged child abuse or neglect, you do not explain, nor can we discern from our review, that this information constitutes a report of alleged or suspected abuse or neglect made under chapter 261 or how this information was used or developed in an investigation under chapter 261. *See id.* Therefore, we find that you have failed to adequately demonstrate the applicability of section 261.201(a) of the Family Code to the submitted police report survey, and the department may not withhold the submitted police report survey under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we note the requestor is the parent of the child victim listed in case number 90-398836/01, and the requestor is not alleged to have committed the suspected abuse. In this instance, the department may not use section 261.201(a) to withhold case number 90-398836/01 from this requestor. *Id.* § 261.201(k). Section 261.201(1)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Further, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). You assert case number 90-398836/01 is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we will consider your remaining argument under section 552.108 for case number 90-398836/01 along with the submitted police report survey.

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 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 case number 90-398836/01 pertains to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of case number 90-398836/01 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). Therefore, we conclude that section 552.108(a)(1) is applicable to case number 90-398836/01. However, we find that you have failed to explain how release of the submitted police report survey would interfere with the detection, investigation, or prosecution of crime. Therefore, you have not established that section 552.108(a)(1) applies to the remaining information, and none of the remaining information may be withheld under section 552.108(a)(1).

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*, and includes the identity of the complainant. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed

public by *Houston Chronicle*). As noted above, section 261.201(1)(3) of the Family Code states the reporting party's identity must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold case number 90-398836/01 under section 552.108(a)(1). However, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(1)(3). The remaining basic information must be released along with the submitted police report survey.¹

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/cc

Ref: ID# 357319

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹We note the remaining information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child's parent. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.