



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
1201 N. Hwy 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-15103

Dear Ms. Montgomery:

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# 359175.

The Ellis County District Attorney's Office (the "district attorney") received a request for information regarding a specified incident. You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in 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.

Fam. Code § 261.201(a). You state portions of the submitted information involve an injury to a child and are therefore confidential under section 261.201. Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse under section 261.201(a)(2) of the Family Code. *See id.* § 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 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”). Additionally, the remaining information contains information relating to a report of alleged abuse of a child. *See id.* § 261.201(a)(1). Thus, this information, which we have marked, is within the scope of section 261.201(a)(1) of the Family Code. You do not indicate the district attorney has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude the information we have marked is confidential under subsections 261.201(a)(1) and (a)(2) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(a)(1) and (a)(2) of the Family Code.¹

You claim section 552.108(a)(1) of the Government Code for portions of the remaining 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(a)(1) 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 remaining information relates to a pending criminal investigation and prosecution. Based on this representation, we conclude release of the information you have marked 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 agree that section 552.108(a)(1) applies to the information you have marked.

We note 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 a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the

¹As our ruling is dispositive, we need not address your remaining arguments for this information.

exception of the basic information, the district attorney may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

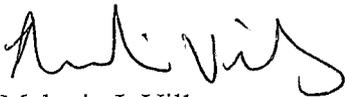
The remaining information contains Texas driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Pursuant to section 552.130 of the Government Code, you must withhold the Texas driver's license information you have marked, in addition to the information we have marked.

In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the district attorney may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The marked Texas driver's license information must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/cc

Ref: ID# 359175

Enc. Submitted documents

c: Requestor
(w/o enclosures)
