



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-16621

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# 362114 (San Antonio No. ORR 2009-4287).

The San Antonio Police Department (the "department") received a request for a specified offense report. 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.

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 protected by other statutes. You claim section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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 report indicates the police conducted an investigation of sexual assault of a minor under section 22.011 of the Penal Code. Section 261.001 of the Family Code defines "abuse" for purposes of section 261.201 to include, among other things, sexual assault under section 22.011 of the Penal Code. *Id.* § 261.001(1)(E). Although section 101.003(a) of the Family Code defines a "child" for purposes of section 261.201 as a "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," *id.* § 101.003(a), we note the Penal Code defines a "child" for purposes of section 22.011 as "a person younger than 17 years of age who is not the spouse of the actor." Penal Code § 22.011(c)(1). We find that, when read together, sections 261.001(1)(E) of the Family Code and 22.011(c)(1) of the Penal Code proscribe that sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. In this instance, the submitted information reflects that the minor is seventeen years old. Therefore, we cannot conclude the submitted information was used or developed in an investigation into child abuse under chapter 261 of the Family Code. Thus, section 261.201 of the Family Code is inapplicable to the submitted information, and none of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

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 the submitted information pertains to a pending criminal investigation. Based upon this representation, we conclude that the release of the submitted report 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 the submitted report.

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*). Accordingly, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1).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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 362114

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself or a person for whom he is an authorized representative). Therefore, if the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.