



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2010

Mr. Cary L. Bovey
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664

OR2010-01004

Dear Mr. Bovey:

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# 367791.

The Navasota Police Department (the "department"), which you represent, received two requests for information related to a specified incident. The first requestor seeks any and all reports, documents, notes, photographs, videotapes, audiotapes, tape recordings, statements, and citations related to the specified incident. The second requestor seeks all records pertaining to a specified individual, including the investigation and findings related to the specified incident. 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 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 of Family and Protective Services] 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:

...

(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.

Fam. Code § 261.201(a), (k), (l). You assert, and we agree, the submitted report and related materials concern an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). As you have not indicated the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Based on your representations and our review, we find the submitted report and related materials are generally confidential under section 261.201 of the Family Code. *See id.* § 261.201(a). Because the second requestor is a member of the public, the submitted records must be withheld from her in their entirety.¹ *See* Open Records

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information as it pertains to the second requestor.

Decision No. 440 at 2 (1986) (predecessor statute). The first requestor, however, is an attorney representing a parent of the child listed in the report, and the parent is not alleged to have committed the suspected abuse. As you acknowledge, the submitted report and related materials may not be withheld from the first requestor under section 261.201(a). *Id.* § 261.201(k) (investigating agency shall provide to parent, guardian, or other legal representative information concerning reported abuse or neglect). Section 261.201(l)(2) provides, however, that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the submitted records are excepted from public disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. Accordingly, we will consider your remaining arguments against disclosure.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted records pertain to a pending investigation. Based upon your representation and our review, we find the release of the submitted report and related materials 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).

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). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identity of the complainant and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, we find the complainant to be the reporting party. Section 261.201(l)(3) of the Family Code states, however, the reporting party’s identity must be redacted. *See* Fam. Code § 261.201(l)(3). You have marked the information you seek to withhold under section 261.201(l)(3). We agree some of the information you have marked is identifying. However, you have not demonstrated that the remaining information you have marked is identifying. Therefore, with the exception of basic information, the department may withhold the submitted records under section 552.108(a)(1). However, in releasing basic information, the department must withhold the reporting party’s identifying information, which we have marked, under section 261.201(l)(3) of the Family Code.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the submitted report and related materials must be withheld in their entirety from the second requestor pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the submitted report and related materials from the first requestor. In releasing basic information, the department must withhold the reporting party's identifying information pursuant to section 261.201(1)(3) of the Family Code. The remaining basic information must be released to the first requestor.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 367791

Enc. Submitted documents

c: Requestor
(w/o enclosures)