



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2010

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-01683

Dear Mr. Weir:

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# 369090 (ORR 2009-4674).

The San Antonio Police Department (the "department") received a request for information relating to a specified case number. 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 information you submitted.

We first note that some of the submitted information was created subsequent to the date of the department's receipt of this request for information. Because the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information, the information that was created subsequent to the date of the department's receipt of this request is not responsive to the request.<sup>1</sup> This decision does not address the public availability of that information, which we have marked, and it need not be released in response to this request.

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We next note that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in claiming an exception to disclosure under section 552.101 of the Government Code.<sup>2</sup> See Gov't Code § 552.301(a)-(b). Nevertheless, we will consider the department's claim under section 552.101, which can provide a compelling reason for non-disclosure of information under section 552.302 of the Government Code. See *id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). We also will consider the department's claim under section 552.108 of the Government Code, which was timely asserted.

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 exception encompasses information that other statutes make confidential. The department raises section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services (“DFPS”)] 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

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<sup>2</sup>The department states that it received this request for information on November 12, 2009; therefore, the department's ten-business-day deadline under section 552.301(b) was November 23. The department raised section 552.101 in correspondence submitted to this office by United States Mail meter-marked January 5, 2010.

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.

(1) 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). We find that the responsive information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for the purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the responsive information is generally confidential under section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

In this instance, however, the responsive information identifies the requestor as a foster parent of the child who was the victim of the alleged or suspected abuse. Moreover, the responsive information does not indicate that the requestor is alleged to have committed the alleged or suspected child abuse. We note that the requestor is not the child victim’s parent, for the purposes of section 261.201(k). *See Fam. Code § 101.024 (defining “parent” for purposes of Fam. Code tit. 5).* Nevertheless, we understand that foster children are generally under the conservatorship of DFPS and that the courts may order certain parties such as foster parents to provide certain care and to have certain responsibilities. *See, e.g., id.* §§ 161.207-208, 263.001, 264.122, 266.001, 266.004. We are unable to determine, however, whether the requestor is a managing conservator or other legal representative of the child victim for the purposes of section 261.201(k). Accordingly, we must rule conditionally.

Thus, if the requestor is not the child’s managing conservator or other legal representative, then the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. But if the requestor is the child’s managing conservator or other legal representative,

then the responsive information may not be withheld under section 552.101 on the basis of section 261.201. *See id.* § 261.201(k). Section 261.201(1)(2) provides, however, that any information excepted from required disclosure under the Act or other law may be withheld from disclosure. *See id.* § 261.201(1)(2). Therefore, in the event that the requestor is the child's managing conservator or other legal representative, we will address your claim under section 552.108 of the Government Code.

Section 552.108 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 that claims section 552.108 must reasonably explain how and why this exception 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 indicate that the responsive information is related to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable in this instance. *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).

We note that 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). 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the responsive information under section 552.108(a)(1) of the Government Code.

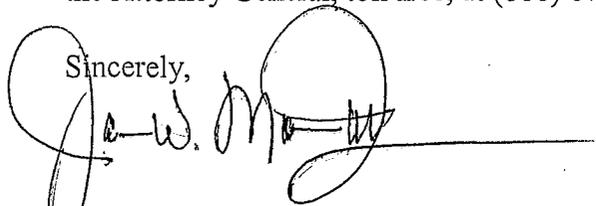
In summary, if the requestor is not the child victim's managing conservator or other legal representative, then the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the child's managing conservator or other legal representative, then the department may withhold the responsive information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).

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](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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J". A horizontal line extends from the end of the signature to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 369090

Enc: Submitted documents

c: Requestor  
(w/o enclosures)