



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2010

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
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13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2010-01903

Dear Mr. Noga:

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# 369531 (City of Coppell Open Records Request Nos. 9868 and 9871).

The City of Coppell (the "city"), which you represent, received two requests for a specified police report. You state the city has released some of the requested information to the requestors. You claim that 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 public 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 such as section 261.201(a) of the Family Code, which provides in pertinent 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 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:

...

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

Id. § 261.201(a), (k), (l). Upon review, we find that the submitted information was used or developed in an investigation by Child Protective Services of alleged or suspected child neglect under chapter 261. *See id.* § 261.001(4) (defining “neglect” 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”). Accordingly, we find that the submitted information is within the scope of section 261.201 of the Family Code. You do not indicate that the city has adopted a rule that governs the release of this type of information. Therefore, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, however, the submitted information reveals that one of the requestors is a parent of the child victim listed in the information at issue. Further, the parent requestor is not the individual alleged to have committed the suspected neglect. *See id.* § 261.201(k). Accordingly, the department may not use section 261.201(a) to withhold the submitted information from the parent requestor. *Id.* However, the department must withhold the submitted information in its entirety from the non-parent requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See*

ORD 440 at 2. We note that basic information is not released when information is being withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. *See id.*

With respect to the parent requestor, although section 261.201(a) may not be used to withhold the submitted information from her, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(1)(2). Thus, because you also assert sections 552.108, 552.130, and 552.147 of the Government Code for the submitted information, we will address your remaining arguments under the Act.

You claim portions of the submitted information are excepted under section 552.108(a)(1) of the Government Code, which 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 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). We note that the submitted information includes citations. Because copies of the citations have been provided to the individuals who were cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the citations from the parent requestor under section 552.108(a)(1). You state the remaining information relates to a pending criminal prosecution. Based on this representation, we conclude that the release of this information 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, as you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the citations and basic information, the city may withhold the submitted information from the parent requestor under section 552.108(a)(1).¹

¹As our ruling with respect to the parent requestor is dispositive for the information subject to section 552.108, we need not address your remaining arguments against the disclosure of portions of this information.

Next, the citations contain information that is subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the Texas driver's license information we have marked in the citations from the parent requestor under section 552.130 of the Government Code.²

In summary, the city must withhold the submitted information in its entirety from the non parent requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the marked citations and basic information, the city may withhold the submitted information from the parent requestor under section 552.108(a)(1) of the Government Code. The city must withhold the Texas driver's license information we have marked in the citations from the parent requestor under section 552.130 of the Government Code. The remaining information must be released to the parent 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 369531

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)