



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2010

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2010-02781

Dear Ms. Messer:

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# 371636.

The Abilene Police Department (the "department") received two requests from the same requestor for information related to two named individuals and three addresses during specified time periods. You state that some responsive information has been released to the requestor. You claim that the submitted 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. 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.

Fam. Code § 261.201(a). You state that report number 09-015829 and its related photographs were used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Based on your representation and our review, we find that report number 09-015829 and its related photographs consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. This information is, therefore, within the scope of section 261.201 of the Family Code. You do not indicate that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that report number 09-015829 and its related photographs are confidential pursuant to section 261.201 of the Family Code, and the department must withhold the information at issue under section 552.101 of the Government Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You seek to withhold the remaining information under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You indicate that the remaining submitted information pertains to closed criminal cases that did not result in conviction or deferred adjudication. Therefore, we conclude that section 552.108(a)(2) is applicable to the remaining information.

We note, however, 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). Basic information

---

<sup>1</sup>As we are able to make this determination, we do not address your remaining arguments for this information.

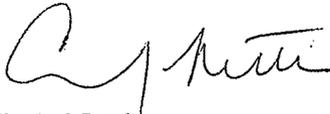
refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). See *Houston Chronicle*, 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

Thus, the department must withhold report number 09-015829 and its related photographs under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released, the department may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 371636

Enc. Submitted documents

c: Requestor  
(w/o enclosures)