



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2010

Ms. Vivian J. Harvey  
Assistant County Attorney  
Henderson County  
Henderson County Courthouse, Room 100  
Athens, Texas 75751

OR2010-03333

Dear Ms. Harvey:

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# 371939.

The Henderson County Sheriff's Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> 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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). The submitted information was used or developed in an investigation of alleged child abuse. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* 101.003(a) (defining “child” for purposes 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). Therefore, we find this information

is generally confidential under section 261.201 of the Family Code. However, the requestor is the stepparent of the child victim concerned and is not alleged to have committed the suspected abuse. If the requestor is not the child victim's legal representative, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. If the requestor is the child's legal representative, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). However, in that instance, section 261.201(l)(3) requires that before a child's legal representative may inspect such records, the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the submitted information is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we will consider your argument under this exception.

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 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 the submitted information relates to a pending criminal investigation. Based on this representation and our review, we conclude that 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. 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).

However, 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* and includes the identity of the complainant. *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*). In this instance, the listed complainant is also the reporting party for purposes of section 261.201 of the Family Code. As noted, section 261.201(l)(3) states the reporting party's identity must be redacted. *See* Fam. Code § 262.201(l)(3). We have marked the types of information that must be redacted under section 261.201(l)(3). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, if the requestor is not the legal representative of the child victim, the department must withhold the submitted 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 legal representative of the child victim, the department may, with the exception of basic information, withhold the submitted information under section 552.108 of the Government Code; however, in releasing basic information, the department must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>2</sup>

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 371939

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>In that event, we note that because the requestor would have a special right of access to the information being released, the department would again need to seek a decision from this office if it receives another request for the same information from a different requestor.