



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-3452

Dear Mr. Alicie:

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# 372566.

The Baytown Police Department (the "department") received a request for report number 09-4821, including photographs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 state report number 09-4821 was used or developed in an investigation of alleged or suspected child abuse and, thus, is generally confidential under section 261.201(a) of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). You acknowledge that, in this instance, the requestor who is a parent of the child victim listed in the report is not alleged to have committed the suspected abuse, and, as such, the report may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). You claim, however, the reporting party’s identifying information, which you marked in yellow, must be withheld pursuant to section 261.201(l)(3). *Id.* § 261.201(l)(3) (stating the identity of the person who made the report must be redacted before a parent may inspect or copy the report). Upon review, we agree most of the information you marked in yellow, and the additional information we marked, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. However, you have not explained how the remaining information you marked in yellow identifies the reporting party, and this

information may not be withheld on this basis. As you have raised no other exceptions to disclosure for this information, it must be released.

Additionally, section 261.201(1)(2) of the Family Code provides 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(1)(2). Accordingly we will address your arguments that the marked portions of report number 09-4821 and the submitted photographs are excepted under sections 552.108 and 552.130 of the Government Code.

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 report number 09-4821 and the submitted photographs pertain to a pending case. Based upon your representation and our review, we find the release of the information you marked in orange, and the submitted photographs, 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). Therefore the information you marked in orange, and the submitted photographs, may be withheld pursuant to section 552.108(a)(1).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency. Gov’t Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas driver’s license number you marked in pink under section 552.130.¹

In summary, with the exception of the information we marked for release, the department must withhold the information you marked in yellow, and the additional information we marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department may withhold the information you marked in orange and the submitted photographs under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver’s license number you

¹We 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 a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

marked in pink under section 552.130 of the Government Code. The remaining information must be released.²

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# 372566

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note you marked partial social security numbers in green under section 552.147 of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.