



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2010

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2010-05217

Dear Ms. Villarreal:

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# 375571 (City of Waco Ref. # LGL-10-102).

The Waco Police Department (the "department") received a request for all arrest forms pertaining to a named individual, and information pertaining to two incidents that occurred on two specified dates. You state that you have released basic information from both specified incidents to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records No. 127 (1976) (summarizing types of information considered to be basic information). You also state that you have redacted information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim that portions of the submitted information are 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

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<sup>1</sup> This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certain Texas motor vehicle information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 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 § (k), (l). Upon review, we find that the submitted report numbered 09-11897 was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (definition of “child abuse” includes indecency with a child under Penal Code section 21.11); *see also id.* § 101.003(a) (defining “child” for purposes of this section as a person under 18 years of age). Thus, we find this information is generally confidential under section 261.201 of the Family Code. However, in this instance, the requestor is a parent of the child victim listed in the information at issue and is not alleged to have committed the suspected abuse. Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. Fam. Code § 261.201(k). However, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise section 552.101 in conjunction with section 772.318 of the Health and Safety Code and 552.108 of the Government Code for the information at issue. Accordingly, we will address your arguments under these exceptions.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. You contend the information you have marked contained in the submitted computer-aided dispatch (“CAD”) sheets pertaining to report number 09-11897 is excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See Open Records Decision No. 649 (1996)*. We understand the City of Waco to be part of an emergency communication district that was established under section 772.318.<sup>2</sup> You have marked telephone numbers the department seeks to withhold under section 772.318. Thus, we find that to the extent the telephone numbers you have marked are the originating telephone numbers supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, to the extent any of the marked information was not supplied by a 9-1-1 service supplier, section 772.318 is not applicable to this information and it must be released to the requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov’t Code 552.108(a)(2)*. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication.

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<sup>2</sup> Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

*See id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that report number 09-11897 pertains to a closed investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude that the department may withhold the information you have marked in report number 09-11897 under section 552.108(a)(2) of the Government Code.

Additionally, you claim report number 09-29188 is subject to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 09-29188 pertains to a pending prosecution. Based on this representation and our review, we conclude the department has demonstrated that release of incident report number 09-29188 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). Accordingly, the department may withhold the portions of report number 09-29188 it has marked under section 552.108(a)(1).

In summary, to the extent the telephone numbers you have marked in the submitted CAD sheets are the originating telephone numbers supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department may withhold the information you have marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. The remaining information must be released to this requestor.<sup>3</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,

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<sup>3</sup> We note that because the information being released contains confidential information regarding the alleged child victim that the requestor may obtain as the child’s parent under section 261.201(k), if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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 McGuire".

James McGuire  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 375571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)