



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2010-06748

Dear Ms. Sangsvang:

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# 379193 (PIR No. 2667-10).

The City of Fort Worth (the "city") received a request for information relating to a specified criminal case. You claim that the requested 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 information you submitted.¹

We first note that some of the submitted information was created after the date of the city's receipt of this request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive

¹You state that a social security number and Texas motor vehicle record information have been redacted from the submitted documents pursuant to section 552.147 of the Government Code and previous determinations issued to the city under section 552.130 of the Government Code. *See* Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release without necessity of requesting attorney general's decision under Act); Open Records Decision No. 673 (2001) (previous determinations).

information.² Thus, the submitted information that did not exist when the city received this request is not responsive to the request. This decision does not address the public availability of that information, which we have marked, and the city need not release it in response to this request.

Next, we address the city's exceptions to disclosure of the responsive 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. This exception encompasses information that other statutes make confidential. The city claims section 552.101 in conjunction with section 261.201 of the Family Code, which provides in 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 [Texas 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.

²See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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). We find that the responsive information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code and is therefore generally confidential under section 261.201(a). *See id.* § 261.001(1) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of aggravated sexual assault under Penal Code § 22.021). In this instance, however, the requestor identifies himself as a parent of the child who is listed as the victim of the alleged abuse. Moreover, the requestor is not the person who is alleged to have committed the abuse. Therefore, the city may not withhold the responsive information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). We have marked that information, which the city must withhold under section 552.101 of the Government Code in conjunction with section 261.201(l)(3). Section 261.201(l) also provides that any information that is excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will address the city’s claim for the rest of the responsive information under section 552.108 of the Government Code.

Section 552.108 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 inform us, and have provided an affidavit from the Tarrant County Criminal District Attorney’s office stating, that the rest of the responsive information is related to a pending criminal prosecution. Based on your representation and the affidavit, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identity of the complainant and a detailed description of the offense. Because the responsive information is related to an alleged sexual assault, the city would ordinarily be required to withhold the identity of the crime victim under section 552.101 in conjunction with common-law privacy. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the responsive information uses a pseudonym to identify the child who is listed as the victim. Although the responsive documents contain other information that would tend to identify the child, the requestor has a right of access to any information relating to his child that would be protected from public disclosure by common-law privacy. See Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).³ Therefore, the city must release basic offense and arrest information in accordance with section 552.108(c). See ORD 127 at 3-4. The city may withhold the rest of the responsive information under section 552.108(a)(1).

In summary: (1) the city must withhold the marked information that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code; and (2) the city may withhold the rest of the responsive information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).⁴

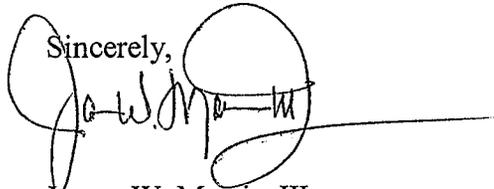
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³Section 552.023 of the Government Code provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

⁴Although this requestor has a right of access under section 261.201(k) of the Family Code to information relating to his child, the city would ordinarily be required to withhold the submitted information under section 261.201(a). This requestor also has a right of access under section 552.023 of the Government Code to basic information relating to his child that the city would be required to withhold from the public. Therefore, if the city receives another request for this same information from a different requestor, the city should resubmit this information and request another decision. See Gov’t Code §§ 552.301(a), .302.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 379193

Enc: Submitted documents

c: Requestor
(w/o enclosures)