



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 25, 2010

Chief Gregory L. Grigg  
Deer Park Police Department  
2911 Center Street  
Deer Park, Texas 77536-4942

OR2010-07552

Dear Chief Grigg:

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# 380580.

The Deer Park Police Department (the "department") received a request for records of a call made to a specified address on March 8, 2010. You claim report number 2010-00859 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 assert report number 2010-00859 is excepted from disclosure under section 261.201. The submitted report is an investigation of an incident involving three charges. The report does not reflect how it was used or developed in an investigation by the department of child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *id.* § 101.003(a) (defining “child” for purposes of the Family Code). Furthermore, you have not submitted a representation from any investigating agency that the agency used this report in an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Therefore, we find you have failed to demonstrate the applicability of section 261.201 to the report. Consequently, this report may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also assert marked portions of the submitted report may be excepted from disclosure under section 552.108 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 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 information you marked pertains to a pending criminal investigation. Based on your representations and our review, we agree section 552.108(a)(1) is applicable to the information you marked. *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, 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes the offense committed. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You seek to withhold two of the charges from disclosure. You seek to withhold the second charge under section 552.108(a)(1). Because the charges indicate the offenses committed, they are basic information and may not be withheld under section 552.108. As you raise no other exceptions for the second charge, it must be released as basic information under section 552.108(c). You claim the third charge, however, is protected under privacy.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.*

at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You claim the third charge, the identity of the victim, and information regarding a previous incident, are protected by common-law privacy. In this instance, however, you informed this office that the individual whose privacy interests are at issue is deceased. The right of privacy lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Consequently, none of the information you marked may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the information you marked under section 552.108 of the Government Code.<sup>1</sup> As you have raised no further exceptions against disclosure, the remaining information must be released.

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 380580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)