



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2010

Mr. Tom Donnelly  
City Secretary/Administrator  
City of Hallettsville  
101 North Main  
Hallettsville, Texas 77964-2727

OR2010-08737

Dear Mr. Donnelly:

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# 382675.

The City of Hallettsville (the "city") received a request for all information pertaining to three specified incidents. You state the city has provided to the requestor all of the requested information regarding two of the incidents and some of the requested information regarding the third incident. You claim the submitted police incident report 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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." *Id.* § 552.101. This section encompasses other laws that make information confidential, such as section 48.101 of the Human Resources Code, which provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. Section 48.051 of the Human Resources Code provides that “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the Texas Department of Family and Protective Services (“DFPS”) or another appropriate state agency.<sup>1</sup> *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a city’s police department generally are not subject to section 48.101. You contend the entire police incident report number IR-09-000474 is confidential under section 48.101. We note, however, this report was created by the city’s police department after receiving a report of alleged exploitation of an elderly person. Thus, you have failed to demonstrate the entire report number IR-09-000474 pertains to an investigation conducted by an entity authorized to conduct such an investigation under chapter 48 of the Human Resources Code. Consequently, report number IR-09-000474 may not be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

We note, however, report number IR-09-000474 includes an investigation report from DFPS that details an investigation conducted under chapter 48 by DFPS regarding the incident at issue. We find the DFPS report consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48. Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101(b). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude the city must withhold the

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<sup>1</sup>*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

submitted DFPS investigation report, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.<sup>2</sup>

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the remaining information in incident report number IR-09-000474 pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

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 Publishing 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), and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although you state you have provided some information from report number IR-09-000474 to the requestor, we note the information you provided does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Accordingly, we determine the city must release a sufficient portion of the remaining information to encompass a detailed description of the offense. The city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the marked DFPS investigation report under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. With the exception of a detailed description of the offense, which the city must release, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

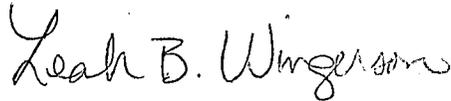
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for this information.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 382675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)