



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2010

Mr. Jason D. King
Counsel to the City of Glenn Heights
Akers & Boulware-Wells, LLP
6618 Sitio Del Rio Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2010-09687

Dear Mr. King:

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# 384727.

The City of Glenn Heights (the "city"), which you represent, received a request for information pertaining to a specified incident, specifically the incident report and a video tape of the questioning of the victim. You indicate the city does not maintain, nor does it have access to, the video tape of the questioning of the victim. You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

(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 note the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Therefore, the submitted information is generally confidential under section 261.201 of the Family Code.

However, we note, and you acknowledge, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the city may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(3) provides, however, that the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). In addition, section 261.201(l)(2) states 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). Therefore, we will address your argument to withhold the submitted information under section 552.108 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 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 submitted information relates to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 identity of the complainant and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). As noted above, the identity of the party who made the report must be redacted. *See* Fam. Code § 261.201(l)(3). Accordingly, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the reporting party’s identity, which we have marked, under section 552.101 in conjunction

with section 261.201(1)(3) of the Family Code. The remaining basic information must be released to the requestor.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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/tp

Ref: ID# 384727

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access. See Fam. Code § 261.201(k). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.