



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2010

Mr. Jeffrey L. Moore  
Brown & Hofmeister, L.L.P.  
For City of Roanoke  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-09751

Dear Mr. Moore:

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# 384969.

The Roanoke Police Department (the "department"), which you represent, received a request for a specified incident report. You claim that the submitted 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."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in relevant 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:

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

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k)-(l). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1)(E) (definition of "abuse" includes indecency with a child under section 21.11, Penal Code). Thus, the submitted report is generally confidential under section 261.201 of the Family Code.

We note, however, the requestor is the stepmother of the child victim listed in the report and may be the child's managing conservator or other legal representative. Also, the requestor is not alleged to have committed the abuse. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As it is unclear whether the requestor is the managing conservator or other legal representative of the child victim, we must rule conditionally. If the requestor is not the managing conservator or other legal representative of the child victim listed in the submitted information, then the department

must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is the managing conservator or other legal representative of the child victim, pursuant to section 261.201(k), the department may not withhold the submitted information from the requestor under section 261.201(a). Fam. Code § 261.201(k). Section 261.201(l)(2), however, 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). Accordingly, we will address your argument against disclosure.

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 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 the submitted report is pending investigation by the department and prosecution by the Denton County District Attorney’s Office and has been referred to the Denton County Grand Jury. Based on your representations and our review, we conclude that release of this information would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) of the Government Code is applicable to the submitted report.

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). 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the managing conservator or other legal representative of the child victim listed in the submitted information, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the managing conservator or other legal representative of the child victim, then with the exception basic information, the department may withhold the submitted information under section 552.108(a)(1) 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.

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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 384969

Enc. Submitted documents

c: Requestor  
(w/o enclosures)