



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Ms. Yvette Aguilar
Assistant City Attorney
Police Legal Advisor
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2010-10221

Dear Ms. Aguilar:

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# 386154.

The Corpus Christi Police Department (the "department") received a request for reports and photographs pertaining to a specified incident or involving a named individual during a specified time period. You indicate you will withhold information you marked under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and under section 552.147 of the Government Code.¹ You claim the submitted 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 submitted information.

Initially, we note the request seeks information covering the period from April 9 to April 12, 2010. One of the submitted reports, which we have marked, relates to an incident that took place on April 19, 2010. Therefore, this information is not responsive to the

¹This office recently issued ORD 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

present request. The department need not release nonresponsive information in response to this request, and this ruling will not address such 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 1004120144 is excepted from disclosure under section 261.201. We note report number 1004120144 involves a child custody dispute and not allegations of abuse or neglect. Upon review, we find you have not demonstrated any of the submitted information consists of a report of alleged or suspected child abuse or neglect made under chapter 261 or was used or developed in an investigation under chapter 261. *See id.* § 261.201(a); *see also id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), § 101.003(a) (defining "child" for purposes of the Family Code). Accordingly, we conclude report number 1004120144 is not confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 on that basis. As you raise no other argument against disclosure of this information, it must be released.

Section 552.101 also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly

intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, you state the requestor knows the identity of the individual involved as well as the nature of the information in report number 1004110136. Therefore, this report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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). Generally, 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 in report number 1004130081 relates to an active criminal case. Based upon your representation and our review, we conclude the release of the information you have marked relating in report number 1004130081 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the information at issue.

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*. *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*). We note you seek to withhold almost the entire narrative portion of report number 1004130081 under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. *Id.* Accordingly, we determine the department must release a sufficient portion of the narrative in report number 1004130081 to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of the basic information, the department may withhold the information you have marked in report number 1004130081 under section 552.108(a)(1).

In summary, the department must withhold report number 1004110136 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the department may withhold the information you have marked in report number 1004130081 under section 552.108(a)(1) of the Government Code. The remaining responsive 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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/tp

Ref: ID# 386154

Enc. Submitted documents

c: Requestor
(w/o enclosures)