



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-10573

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# 386871.

The Corpus Christi Police Department (the "department") received a request for a report pertaining to a specified incident involving the requestor's granddaughter. You claim portions of the submitted report are 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You state report number 1004300032 was used or developed in an investigation of alleged or suspected child abuse and, thus, is generally confidential under section 261.201(a) of the Family Code. *See id.* § 261.001(1)(E) (definition of "abuse" includes indecency with a child under section 21.11, Penal Code). You acknowledge that, in this instance, the requestor, who is the guardian of the child victim listed in the report, is not alleged to have committed the suspected abuse, and, as such, the report may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). You claim, however, the reporting party's identifying information, which you marked, must be withheld pursuant to section 261.201(l)(3). *Id.* § 261.201(l)(3) (stating the identity of the person who made the report must be redacted before a parent may inspect or copy the report). Upon review, we agree the information you marked on pages 3 and 5 of the report must be withheld under section 552.101 of the Government Code in conjunction with

section 261.201(1)(3) of the Family Code.¹ However, you have not explained how the information you marked on page 2 identifies the reporting party, and this information may not be withheld on that basis.

Additionally, section 261.201(1)(2) of the Family Code provides that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly we will address your argument that the information you marked on page 2 is excepted 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 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 state the submitted report pertains to a pending criminal investigation. You state the release of the information you marked on page 2 would interfere with this pending investigation. Based upon your representations and our review, we find the release of the information you marked on page 2 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. 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). Therefore the information you marked on page 2 may be withheld pursuant to section 552.108(a)(1).

In summary, the department must withhold the information you marked on pages 3 and 5 of the report under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department may withhold the information you marked on page 2 under section 552.108(a)(1) of the Government Code. The remaining information must be released to this requestor.

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

¹As our ruling is dispositive, we need not address your argument under section 552.108 for a portion of this information.

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, appearing to read 'J. Eales', written in black ink.

Jessica Eales
Assistant Attorney General
Open Records Division

JCE/jb

Ref: ID# 386871

Enc. Submitted documents

c: Requestor
(w/o enclosures)