



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2010

Mr. David H. Guerra
King, Guerra, Davis & Garcia, PC
P.O. Box 1025
Mission, Texas 78573

OR2010-10999

Dear Mr. Guerra:

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# 387660.

The City of Mission (the "city"), which you represent, received a request for a specified incident report. You state the city released some information to the requestor. You claim portions of the submitted information are 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 section 261.201 of the Family Code, which provides as follows:

- (a) Except as provided by Section 261.203, the 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:

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).

(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)(2), (3). The submitted information was used or developed in an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes); *but see* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). We therefore conclude the submitted information is generally confidential under section 261.201. However, the requestor is the mother of the child victim listed in the report, and the mother is not alleged to have committed the suspected abuse. In this instance, the submitted information may not be withheld from this requestor pursuant to section 261.201(a). Fam. Code § 261.201(k). Section 261.201(l)(2), however, states 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). Thus, because the submitted information may not be withheld from the child victim's mother under section 261.201, and you assert section 552.108 of the Government Code for portions of the submitted information, we will address your argument under this section.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation or prosecution. Based upon your representation, we conclude the release of the information you have marked in the submitted report 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). Thus, we agree section 552.108(a)(1) is generally applicable to the marked information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic, front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, the identity and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do 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 narrative section of the submitted report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*.

In this instance, the complainant is also the reporting party for purposes of section 261.201 of the Family Code and the description of the offense identifies the reporting party for purposes of section 261.201. Section 261.201(1)(3) provides the reporting party’s identity must be redacted. *See* Fam. Code § 261.201(1)(3). We have marked the reporting party’s identifying information from the basic information under section 261.201(1)(3). Thus, with the exception of basic information, including a detailed description of the offense, the city may withhold the marked information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the information we

have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 387660

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to information that would ordinarily be confidential, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.