



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 12, 2010

Ms. Diana Davis  
Records Clerk  
Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2010-12288

Dear Ms. Davis:

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# 390134.

The City of Harker Heights (the "city") received one request from two requestors for police records containing the requestors' last name during a specified period of time. You claim the requested 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.

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 information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 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:

- (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; and

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

Fam. Code § 261.201(a), (k), (l). Upon review, we agree report numbers 09-03585 and 10-01336 pertain to investigations of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of Fam. Code ch. 261 includes sexual assault under Penal Code section 22.011 and indecency with a child under Penal Code section 21.11); *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); *see also* Penal Code § 22.011(c) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). Thus, we find this information falls within the scope of section 261.201. However, one of the requestors is the father of the child victim who is the subject of the reports at issue, the other requestor is the stepmother of the child requesting the information in conjunction with the father, and neither is alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold this information from these requestors. Fam. Code § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law

may be withheld from disclosure. *Id.* § 261.201(1)(2). You assert the information at issue is excepted from public disclosure under section 552.101 in conjunction with common-law privacy of the Government Code. Accordingly, we will consider your remaining argument against disclosure for report numbers 09-03585 and 10-01336. We will also consider your arguments for the remaining submitted report.

You seek to withhold report numbers 09-03585 and 10-01336 under section 552.101 in conjunction with common-law privacy. Common-law privacy protects information that (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 courts and this office have recognized victims of sexual assault or other sex-related offenses have certain common-law privacy interests. *See* 540 S.W.2d 668; Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). As previously noted, however, the requestors are the father and stepmother of the child whose privacy interests are implicated in these reports. As such, they have a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy interests. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, report numbers 09-03585 and 10-01336 may not be withheld from these requestors on the basis of 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). 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 indicate report number 10-01398 relates to an open criminal case. Based on this representation and our review, we conclude that release of the information at issue 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). Thus, section 552.108(a)(1) is 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). 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 (1976) (summarizing types of information

considered to be basic information). Therefore, with the exception of basic information, the city may withhold report number 10-01398 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the identifying information of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code, but must release the remaining information in report numbers 09-03585 and 10-01336 to the requestors in accordance with section 261.201(k) of the Family Code.<sup>1</sup> With the exception of basic information, the city may withhold report number 10-01398 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 390134

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

---

<sup>1</sup>We note that because the requestors have a special right of access to information being released in this instance, the city must again seek a decision from this office if it receives another request for the same information from different requestors.