



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-13454

Dear Ms. Sandoval-Walker:

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# 392505 (2010-06-38-AG).

The El Paso Police Department (the "department") received a request for any and all documents related to two named individuals, including a specified case. You state you have released some of the requested information. 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 public 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 information protected by other statutes, such as 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 Chapter 552, Government Code, and may be disclosed only for

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).

purposes consistent with [the Family 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 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). The submitted reports consist of information used or developed in investigations of alleged child abuse under chapter 261; therefore, the submitted information is within the scope of section 261.201 of the Family Code. *See id.*

§ 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011). We note the requestor is the attorney for the father of the alleged child victim in the submitted reports, and the father is not alleged to have committed the abuse. Pursuant to section 261.201(k), the department may not withhold the submitted reports from this requestor under section 261.201(a). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting parties’ identities under section 552.101 in conjunction with section 261.201(l)(3). In addition, section 261.201(l)(2) provides that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the submitted reports are excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we will consider 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 claiming section 552.108(a)(1) 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 report numbers 09-341261 and 08-137273 relate to pending criminal investigations. Based on your representation and our review, we conclude that the release of these reports 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). Accordingly, section 552.108(a)(1) is applicable to report numbers 09-341261 and 08-137273.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). You state report numbers 08-003322 and 07-188233 relate to concluded investigations that did not result in convictions or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, the department must release the types of basic information listed in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic

information, the department may withhold the report numbers 09-341261 and 08-137273 under section 552.108(a)(1) of the Government Code and report numbers 08-003322 and 07-188233 under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting parties' identities under section 552.101 of the Government Code in conjunction with section 261.201(l)(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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 392505

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains confidential information to which the requestor has a right of access. See Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office.