



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2010-14751

Dear Mr. Hernandez:

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# 395135 (Edinburg Reference No. 11567).

The Edinburg Police Department (the "department") received a request for information pertaining to eight specified incident reports, reports concerning child custody for a specified period of time, and reports involving a named individual during a specified period of time. You state you have released some of the requested information to the requestor. You claim that 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 that the department has not submitted report number 10-17878. To the extent this information existed at the time of the request, we presume the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 in part 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:

(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). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as person 14 years of age or younger). Accordingly, we find report numbers 08-12200 and 10-18039 are generally confidential under section 261.201 of the Family Code. We note, however, the requestor is a parent of the child victim listed in report numbers 08-12200

and 10-18039. Although the requestor is a parent of the child victim in report number 10-18039, the requestor is alleged to have committed the suspected abuse in that report. Therefore, the requestor does not have a right of access under section 261.201(k), and the department must withhold report number 10-18039 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, the requestor is not alleged to have committed the suspected abuse in report number 08-12200. Therefore, the department may not withhold report number 08-12200 from this requestor on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(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). Accordingly, we will address your argument under section 552.108 of the Government Code for report number 08-12200.

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.” *See* 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information in report number 08-12200 relates to a pending criminal prosecution. Based on this representation and our review, we conclude 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. 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 applicable to report number 08-12200.

We note 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*, and includes a detailed description of the offense and the name, alias, race, sex, age, and address of the arrestee. *See* 531 S.W.2d at 179-80, 185-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you have marked the entire narrative portion of report number 08-12200 as information you seek to withhold under section 552.108. However, the unmarked 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. Further, you have marked the name, race, sex, age, and address of the arrestee. Accordingly, with the exception of basic information, which must include a detailed description of the offense and the name, race, sex, age, and address of the arrestee, the department may withhold the information you have marked in report number 08-12200 pursuant to section 552.108(a)(1) of the Government Code.

In summary, the department must withhold report number 10-18039 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Apart

from basic information, which must include a detailed description of the offense and the name, race, sex, age, and address of the arrestee, the department may withhold the information you marked in report number 08-12200 under section 552.108(a)(1) of the Government Code. The remaining information must be released.¹

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 395135

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹In this instance, the requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. If the department receives another request for this same information from an individual who does not have a right of access to the information, the department should request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).