



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2010-16612

Dear Ms. Bowling:

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# 398916.

The San Angelo Police Department (the "department") received a request for two specified police reports. You provide documentation reflecting the department released one of the reports to the requestor. You claim the other report, which you submitted for our review, 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 part:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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)(2), (l)(3). You represent submitted report number 10-0005589 was used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “child abuse” for purposes of chapter 261 includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of section 22.021 as “person younger than 17 years of age”). Thus, this report is subject to section 261.201(a). However, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also

raise section 552.108(a)(1) of the Government Code, we will address this argument for the submitted report.

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 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 inform this office report number 10-0005589 is pending investigation by the department. Based on your representations and our review, we determine release of most of the information 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).

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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant. *See Houston Chronicle*, S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The complainant in report number 10-0005589 is also the reporting party. Section 261.201(1)(3) of the Family Code states the identity of the party who made the report must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold report number 10-0005589 under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining basic 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,

¹Because this requestor has a special right of access to basic information being released that would ordinarily be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping underline.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 398916

Enc. Submitted documents

c: Requestor
(w/o enclosures)