



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-16891

Dear Mr. Weir:

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# 401268 (San Antonio File No. 2010-6612).

The City of San Antonio (the "city") received a request for information related to a specified offense report. You claim 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.

Section 552.101 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 states:

(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 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 Chapter 552, Government Code, or other law; and

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

Fam. Code § 261.201(a), (k)–(l). The requested information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Thus, the information is within the scope of section 261.201 of the Family Code. In this instance, however, the requestor may be a managing conservator or other legal representative of the child who is listed as the victim of the alleged abuse. Moreover, the requestor is not accused of committing the alleged abuse. As we are unable to determine whether the requestor is the child's managing conservator or other legal representative, we must rule conditionally. Thus, if the requestor is not the child's managing conservator or other legal representative, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of

the Family Code. If the requestor is the child's managing conservator, or other legal representative, the requested information may not be withheld under section 552.101 on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, we will address the city's claim under section 552.108 of the Government Code.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, 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 Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an active criminal investigation and release of the information would interfere with the investigation and prosecution of the alleged crime. Based on this representation, we agree section 552.108 applies to the submitted information. *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*. This information includes, but is not limited to, the details of an arrest, the physical condition of an arrested person, and a detailed description of the offense. *See Open Records Decision No. 127 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold the information at issue pursuant to section 552.108 of the Government Code.

In summary, if the requestor is not the child's managing conservator or legal representative, the city must withhold the report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child's managing conservator or legal representative, the city may withhold the report, with the exception of basic information, under section 552.108(a)(1) of the Government Code.¹

¹We note the requestor has a right of access to the information being released in this instance, which is information that is confidential with respect to the general public. *See Fam. Code* § 261.201(k). Therefore, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 401268

Enc. Submitted documents

c: Requestor
(w/o enclosures)