



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-17243

Dear Mr. 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# 400570 (ORR# 2010-3630).

The Montgomery County Sheriff's Department (the "sheriff") received a request for a specified police report involving a named individual. 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 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, 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 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[.]

Fam. Code § 261.201(a), (k), (l)(2). You indicate the submitted information was used or developed in an investigation of alleged or suspected child neglect conducted by the sheriff. *See id.* §§ 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code); *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). Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. We note the requestor is the attorney of an individual that may be the parent, managing conservator, or other legal representative of the child victim listed in the report. Further, the requestor’s client is not the suspect of the alleged neglect. Because we are unable to determine if the requestor’s client is the parent, managing conservator, or other legal representative of the child, we must rule conditionally. If the requestor’s client is not a parent, managing conservator, or other legal representative of the child victim listed in the report, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor’s client is a parent, managing conservator, or other legal representative of the child victim listed in the report, then the sheriff may not withhold the information at issue from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, to the extent the requestor’s client is a parent, managing

conservator, or other legal representative of the child victim listed in the submitted report, we will consider your argument under section 552.108 for this information.

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 state the submitted information relates directly to a pending criminal cause of action. Based on your representation, we conclude the release of the submitted information 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 submitted information.

However, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold the submitted information from disclosure under section 552.108(a)(1) of the Government Code.

In summary, if the requestor’s client is not a parent, managing conservator, or other legal representative of the child victim listed in the submitted report, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor’s client is a parent, managing conservator, or other legal representative of the child victim listed in the report, then, with the exception of the basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.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.

¹We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code § 261.201(k). Therefore, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff must again seek a ruling from this office. We further note the basic information includes the arrestee’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 400570

Enc. Submitted documents

c: Requestor
(w/o enclosures)