



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Patricia A. Adams
Town Attorney
Town of Trophy Club
100 Municipal Drive
Trophy Club, Texas 76262

OR2010-17570

Dear Ms. Adams:

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# 400686.

The Town of Trophy Club (the "town") received a request for report number 21000380. 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.

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 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:

....

(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 an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). Thus, the submitted information is generally confidential under section 261.201 of the Family Code. However, the requestor is a parent of the child victim, and she is not alleged to have committed the alleged or suspected abuse. Thus, in this instance, the town may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). You assert the submitted information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy

and section 552.108 of the Government Code. Accordingly, we will consider your remaining arguments against disclosure.

Section 552.101 also encompasses common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The courts and this office have recognized victims of sexual assault or other sex-related offenses have certain common-law privacy interests. *See* 540 S.W.2d 668; Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). As previously noted, however, the requestor is the parent of the child whose privacy interests are implicated in the submitted report. As such, the requestor has a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy interests. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, none of the submitted information may be withheld from this requestor on the basis of section 552.101 of the Government Code in conjunction with common-law privacy.

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). Generally, 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 the submitted information relates to an active criminal case. Based upon your representations and our review, we conclude that 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. 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). Thus, section 552.108(a)(1) is generally applicable to the submitted information.

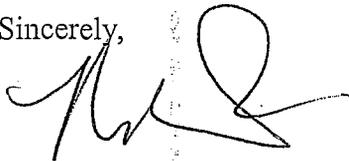
However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the complainant is also the reporting party for purposes of section 261.201 of the Family Code. Thus, with the exception of basic information, the town may withhold the

submitted information under section 552.108(a)(1). However, in releasing basic information, the town must withhold the identity of the reporting party 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 to the requestor.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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 400686

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the town must again seek a decision from this office if it receives another request for the same information from a different requestor.