



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3RD Floor
Fort Worth, Texas 76102

OR2011-00387

Dear Ms. Sangsvang:

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# 405859 (PIR No. W004541).

The City of Fort Worth (the "city") received a request for report number 09-15226. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter No. 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Further, you state you have redacted social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. In addition, the Tarrant County District Attorney's Office (the "district attorney"), in an affidavit you have forwarded to this office, raises sections 552.103 and 552.108 as

¹Section 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(b).

exceptions to disclosure of the requested information. We have considered the exceptions raised and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). We find that the information you have submitted consists of a completed investigation made for or by the city. The city must release information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code, or is expressly made confidential under other law. You claim that this information is excepted from disclosure under section 552.108 of the Government Code. As previously noted, the district attorney, in an affidavit you have forwarded to this office, raises sections 552.103 and 552.108 of the Government Code as exceptions to disclosure of the requested information. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.- Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the city may not withhold the completed investigation pursuant to section 552.103 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider the claims of the city and the district attorney under this exception. Additionally, we note the submitted information may be subject to section 552.101 of the Government Code, which also constitutes other law for purposes of section 552.022; thus, we will also consider the applicability of this exception to the information at issue.²

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 that other statutes make confidential, such as section 261.201 of the Family Code, which provides as follows:

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 . . . 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[.]

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

Id. § 261.201(a), (k), (l). The submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Thus, we find the submitted information is confidential under section 261.201 of the Family Code.

We note, however, the requestor is a parent of the child victim. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the city may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Further, section 261.201(1)(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(1)(2). Therefore, because the city and the district attorney also assert section 552.108 for the submitted information, we will consider your arguments under this section.

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).

As noted above, you have submitted an affidavit from the district attorney representing the submitted information pertains to a criminal prosecution that resulted in a conviction and a sentence of probation for 120 months. The district attorney states in the event the defendant violates the terms and conditions of his probation, he could be sentenced according to the court’s ruling. Further, the district attorney states if the defendant receives any jail time, he will not have yet exhausted his state or federal post conviction remedies. Based on the affidavit, we understand you to argue the criminal prosecution at issue is still pending because the defendant might appeal a possible sentence. However, we note that a mere chance of an appeal is insufficient to demonstrate that the release of the submitted information will interfere with law enforcement efforts. Thus, the city may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the identifying information of the reporting party under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code. The city must release the remaining information.³

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.

³We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 405859

Enc. Submitted documents

c: Requestor
(w/o enclosures)