



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2011

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901

OR2011-04445

Dear Ms. Sandoval-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# 413596 (El Paso# 2011-01-40-AG).

The El Paso Police Department (the "department") received a request for the photographs related to a specified case. 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.

We note that some of the information you have submitted is not responsive to the request. The requestor seeks the photographs relating to the specified case. You have also submitted a printed report related to the case. Thus, this information is not responsive to the request. This ruling does not address the public availability of that information, and the department need not release any non-responsive 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.

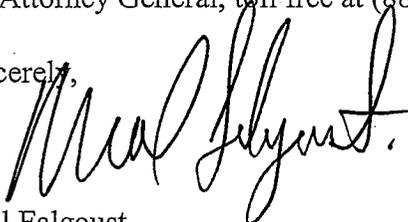
Fam. Code § 261.201(a), (k)–(l). You state the submitted photographs relate to an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note, however, the requestor in this case is identified as the parent of the child named in the report, and the requestor is not accused of having committed the abuse. Accordingly, the department must provide this requestor with information concerning the alleged abuse or neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the department provides information concerning this report, it must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). As you raise section 552.108 as an exception, we will consider its applicability to this information.

Section 552.108(a)(1) of the Government Code exempts 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 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 photographs relate to a pending criminal investigation and release of the photographs would interfere with the detection, investigation, and prosecution of a crime. Based on these representations and our review, we conclude that release of the submitted photographs 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the submitted photographs under section 552.108(a)(1) of the Government Code.

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/dls

Ref: ID# 413596

Enc. Submitted documents

c: Requestor
(w/o enclosures)