



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
Office of the City Attorney
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2011-05127

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# 414281 (ORR# 2011-02-11-AG).

The El Paso Police Department (the "department") received a request for all reports of domestic violence incidents regarding a specified complainant during a specified year. You released some of the requested information. 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.

Initially, we note the submitted information includes documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See Gov't Code* § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108).* Therefore, the department may not withhold these court-filed documents, which we have marked, under section 552.108 of the Government Code. However, because section 552.101 of the Government Code constitutes "other law" that makes information confidential for the purposes of section 552.022, we will consider the applicability of this section to the court-filed documents as well as the remaining information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 261.201 of the Family Code, which provides in relevant part:

(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.

Fam. Code § 261.201(a), (k). Upon review, we find report numbers 2010-302154 and 2010-302160 were used or developed in investigations under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section). Thus, we find these reports are generally confidential under section 261.201 of the Family Code. In this instance, the requestor is an attorney representing the parent of the child victim listed in the reports; however, this parent is alleged to have committed the suspected abuse or neglect. As such, this requestor does not have a right of access to report numbers 2010-302154 and 2010-302160 pursuant to section 261.201(k). Therefore, the department must withhold report numbers 2010-302154 and 2010-302160 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining two reports, 2010-316127 and 2010-188325, pertain to assaults between two adults and you have not established how these reports were used or developed in investigations under chapter 261. Accordingly, the remaining information is not confidential under section 261.201 and may not be withheld under section 552.101 on that basis.

You assert the information in report numbers 2010-316127 and 2010-188325 is excepted from disclosure under section 552.108 of the Government Code. 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 report numbers 2010-316127 and 2010-188325 pertain to pending criminal investigations by the department and the El Paso District Attorney respectively. Based on your representations, we conclude the release of this 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) (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).

Section 552.108, however, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information and the information subject to section 552.022(a)(17), you may withhold report numbers 2010-316127 and 2010-188325 pursuant to section 552.108(a)(1) of the Government Code.

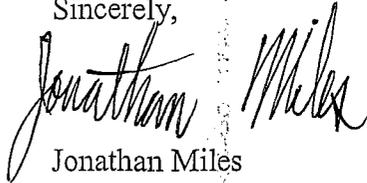
In summary, the department must withhold report numbers 2010-302154 and 2010-302160 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the court documents subject to section 552.022(a)(17), which we have marked for release, and basic information, the department may withhold report numbers 2010-316127 and 2010-188325 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 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. However, in this instance, the requestor has a right of access to his client’s social security number and it must be released to him. *See generally id.* § 552.023(b) (person or person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests).

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 that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 414281

Enc. Submitted documents

c: Requestor
(w/o enclosures)