



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2011

Ms. Michelle L. Villareal  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2011-06069

Dear Ms. Villareal:

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# 416355 (City of Waco # LGL-11-237).

The Waco Police Department (the "department") received a request for information related to a specified incident. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception 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."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted report constitutes files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 22.11 and sexual assault under Penal Code section 22.011); *see also* Penal Code §§ 21.11(a), 22.011(c)(1) (defining “child” for purposes of those sections as a person younger than 17 years of age). Thus, we find the submitted report is generally confidential under section 261.201. In this instance, however, the requestor is the attorney representing the parents of the child victim listed in the report, who are not alleged to have committed the reported abuse. Accordingly, the department may not use section 261.201(a) to withhold this report from this requestor.

See Fam. Code § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting parties' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your argument under section 552.108 of the Government Code for the remaining 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information you wish to withhold under section 552.108(a)(1). You state the investigation at issue is open and pending. Based on your representation and our review, we conclude release of most of the marked information would interfere with the detection, investigation, or prosecution of a crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) applies to most of the information you have marked.

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). We note basic information includes the arrestee's address, details regarding the arrest including date, time, and place, and a detailed description of the offense. See ORD 127 at 2-3. The remaining information to be released does not contain information sufficient to satisfy these requirements. Accordingly, we determine the department must release sufficient portions of the marked information to encompass the arrestee's address, details of the arrest, and a detailed description of the offense. With the exception of that information, the department may withhold the information you have marked under section 552.108(a)(1).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With the exception of the arrestee's address, details of the arrest, and a

detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1). The remaining information must be released to this requestor.<sup>2</sup>

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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 416355

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the information being released contains confidential information to which the requestor has a right of access as the representative of the child's parents. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.