



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2011

Mr. Robert Almonte  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2011-08424

Dear Mr. Almonte:

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# 425341.

The El Paso Police Department (the "department") received a request for information involving a named individual during a specified time interval. You state some of the requested information has been released. You claim the rest of the requested 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 information you submitted.

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. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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, 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 [the Act], or other law; and

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

*Id.* § 261.201(a), (k)-(l). You contend the submitted information pertaining to case number 11-111138 is confidential under section 261.201(a). We find the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of indecency with a child under Penal Code § 21.11); Penal Code § 21.11(a) (defining child as person younger than 17 years of age). We note information may not be withheld on the basis of section 261.201(a) from a parent of a child who was the victim of alleged or suspected abuse, unless the parent is alleged to have committed the abuse. *See id.*

§ 261.201(k). In this instance, the requestor's client is a parent of the child who was the victim of the alleged or suspected abuse, but the requestor's client is alleged to have committed the abuse. We therefore conclude the department must withhold the submitted information pertaining to case number 11-111138 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup> See Open Records Decision No. 440 at 2 (addressing predecessor statute).

Section 552.108 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertaining to case number 08-066318 is related to a case that was dismissed and did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to that information.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). 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*). The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the information pertaining to case number 08-066318 under section 552.108(a)(2) of the Government Code.

In summary, the department (1) must withhold the submitted information pertaining to case number 11-111138 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and (2) may withhold the submitted information pertaining to case number 08-066318 under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c).

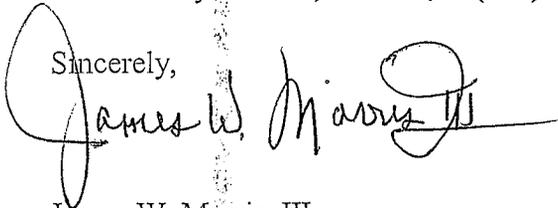
---

<sup>1</sup>We note that because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes, and working papers" relating to an investigation of alleged or suspected child abuse or neglect, the department must not release front-page offense report information in such cases.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 425341

Enc: Submitted documents

c: Requestor  
(w/o enclosures)