



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Mr. Jason D. King
Counsel for City of Balch Springs
Akers & Boulware-Wells, L.L.P.
6618 Sitio Del Rio Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2011-08553

Dear Mr. King:

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# 423006.

The City of Balch Springs (the "city"), which you represent, received a request for all reports requested by a named individual or by a specified address and all "Calls for Service-Call Information Sheet" calls for two addresses for specified periods of time. You claim 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 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." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he 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.

Fam. Code § 261.201(a). You assert Exhibit C was used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). Upon review, we find this information is within the scope of section 261.201 of the Family Code. You do not indicate the city’s police department, which conducted the investigation, has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, the documents at issue are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold Exhibit C from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

You assert the information in Exhibit B is excepted from disclosure under section 552.108 of the Government Code, which provides, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, although you quote subsections 552.108(a)(1) and 552.108(a)(2), you provide arguments to support a claim under subsections 552.108(a)(2). As previously stated, subsection 552.108(a)(2) pertains to information relating to a concluded criminal investigation that did not result in conviction or deferred adjudication. You have submitted a statement from the city's Chief of Police who asserts Exhibit B relates to concluded criminal investigations that did not result in conviction or deferred adjudication. Accordingly, based on your representations, we conclude subsection 552.108(a)(2) is applicable to Exhibit B.

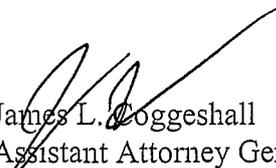
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold Exhibit B under subsection 552.108(a)(2).

To conclude, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the city may withhold Exhibit B under subsection 552.108(a)(2) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 423006

Enc. Submitted documents

c: Requestor
(w/o enclosures)