



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 20, 2011

Ms. Cecilia Gamez
Crime Records Office
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2011-08752

Dear Ms. Gamez:

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# 421407.

The McAllen Police Department (the "department") received two requests from the same requestor for information relating to a named individual, to include three specified police reports and other records pertaining to domestic violence, child abuse, child indecency, injury to a child, sexual assault or other domestic abuse involving the named individual and two other named individuals during a specified time interval.¹ 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 information you submitted.

We first note you have not submitted any information related to case number 2009-80560, which was specifically requested. We therefore assume the department has released any information related to case number 2009-80560 that was in existence when the department received the request for that information. If not, then the department must release any such

¹You indicate 911 recordings that would have otherwise been responsive to these requests no longer exist, as the department retains such recordings for only thirty days. We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We also note some of the submitted information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2011-00856 (2011). In that ruling, we concluded the department may withhold information related to case number 2010-00127079 under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). You do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude the department must dispose of the submitted information related to case number 2010-00127079 in accordance with Open Records Letter No. 2011-00856.³ See Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we address your exceptions to disclosure of the remaining information at issue. 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 [Texas Department of Family and Protective Services] or the Texas Youth

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³As we are able to make this determination, we need not address your claim for the information in question under section 552.108 of the Government Code.

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.

Fam. Code § 261.201(a), (k)-(l). You contend the submitted information related to case numbers 2009-00031328, 2009-00034883, 2009-00042394, and 2011-00020977 is confidential under section 261.201. We find the information at issue was used or developed in investigations 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) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code §§ 21.11 (defining child for purposes of offense of indecency with a child), 22.011 (defining child for purposes of offense of sexual assault of a child), 22.04 (defining child for purposes of offense of injury to a child). Therefore, the information related to case numbers 2009-00031328, 2009-00034883, 2009-00042394, and 2011-00020977 is generally confidential under section 261.201(a) of the Family Code. In this instance, however, the requestor is an attorney for a parent of the child who is identified as the victim of the alleged or suspected abuse, and the requestor’s client is not accused of committing the abuse. Therefore, the department may not withhold the information related to case numbers 2009-00031328, 2009-00034883, 2009-00042394, and 2011-00020977 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k).

Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Therefore, the department must withhold the information

we have marked that identifies the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Section 261.201(1) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 261.201(1)(2). Therefore, we will address your claim 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 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 contend release of the remaining information relating to case numbers 2009-00031328, 2009-00034883, 2009-00042394, and 2011-00020977 would interfere with the detection, investigation, or prosecution of crime. You generally state that “[i]n this particular case, *the case* is pending prosecution” (emphasis added). Having considered your representations and reviewed the information you seek to withhold, we note the information at issue pertains to four separate criminal cases. Moreover, the information reflects that three of the cases were either suspended or closed and does not indicate any of the cases ever proceeded to prosecution. Thus, we find you have not sufficiently demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of any particular crime. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A). We therefore conclude the department may not withhold any of the remaining information related to case numbers 2009-00031328, 2009-00034883, 2009-00042394, and 2011-00020977 under section 552.108 of the Government Code.

In summary: (1) the department must dispose of the submitted information related to case number 2010-00127079 in accordance with Open Records Letter No. 2011-00856; and (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must release the rest of the submitted information.⁴

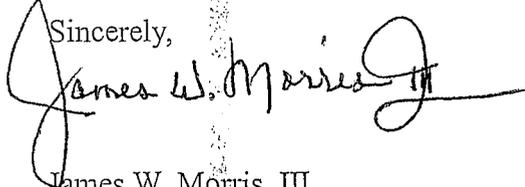
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁴We note this requestor has a right of access to information the department would be required to withhold from the general public. Should the department receive another request for this same information from a different requestor, the department should resubmit this information and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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 long horizontal flourish extending to the right.

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

JWM/em

Ref: ID# 421407

Enc: Submitted documents

c: Requestor
(w/o enclosures)