



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2011-10036

Dear Mr. Falco:

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# 424803.

The College Station Police Department (the "department") received a request for incident reports pertaining to twelve case numbers. You state the department has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides in relevant part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

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

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). Upon review, we find report number 11-000391 was used or developed in an investigation by the department of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Accordingly, we find report number 11-000391 is within the scope of section 261.201 of the Family Code. You do not inform us, and we are not aware, that the department has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude report number 11-000391 is confidential pursuant to section 261.201(a) of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note that basic information is not released when information is being withheld pursuant to section 261.201(a) of the Family Code. *See* Gov’t Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic 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). Generally, a governmental body claiming section 552.108(a)(1) 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 inform us that report numbers 11-00356 and 10-009185 relate to pending criminal prosecutions. Based upon your representations and our review, we conclude that the release of report numbers 11-00356 and 10-009185 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

²As our ruling is dispositive, we need not address your remaining arguments against the disclosure of report number 11-000391.

that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report numbers 11-00356 and 10-009185.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that report numbers 09-007257, 08-005118, 08-00341, 07-014736, 05-003951, and 05-003772 relate to a criminal investigations that have concluded and did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is generally applicable to report numbers 09-007257, 08-005118, 08-00341, 07-014736, 05-003951, and 05-003772.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* ORD 127 at 3-4. Thus, with the exception of basic information, which you state has been released, the department may withhold report numbers 11-00356 and 10-009185 under section 552.108(a)(1) of the Government Code and report numbers 09-007257, 08-005118, 08-00341, 07-014736, 05-003951, and 05-003772 under section 552.108(a)(2) of the Government Code.³

In summary, report number 11-000391 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which you state has been released, the department may withhold report numbers 11-00356 and 10-009185 under section 552.108(a)(1) of the Government Code and report numbers 09-007257, 08-005118, 08-00341, 07-014736, 05-003951, and 05-003772 under section 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

³As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining claim against disclosure for this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 424803

Enc. Submitted documents

c: Requestor
(w/o enclosures)