



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-12221

Dear Mr. Weir:

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# 427867 (COSA File No. W001658).

The City of San Antonio (the "city") received a request for offense report number 00775334. You claim that the submitted 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.

We note the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-18016 (2010) on December 2, 2010. In Open Records Letter No. 2010-18016, we determined the city must withhold the requested information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code because it was used or developed in an investigation of alleged child abuse or neglect. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). The requestor here, however, is a parent of the child victim. Accordingly, as the facts and circumstances on which Open Records Letter No. 2010-18016 was based have changed, the city may not rely on that ruling as a previous determination and withhold the

submitted information on that ground. *See id.* Therefore, we must address the city's arguments to withhold the submitted information from disclosure under the Act.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides 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 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 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). We agree that the information in question 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). *See id.* § 261.001(1)(E) (definition of “abuse” includes indecency with a child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11(a), .011(c)(1) (defining “child” for purposes of Penal Code sections 21.11, 21.011, and 21.021 as a person younger than 17 years of age). Thus, the submitted information is generally confidential under section 261.201 of the Family Code. However, the requestor is a parent of the child victim, and he is not alleged to have committed the alleged or suspected abuse. Thus, in this instance, the city may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). However, we note section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your argument 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). 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 state the submitted information relates to an active criminal investigation by the city’s police department. Based upon your representations and our review, we conclude that release of the submitted information 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 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 generally applicable to the submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction

with section 261.201(1)(3) of the Family Code. The remaining basic information must be released to the requestor.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 427867

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201(k) of the Family Code, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.