



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2011

Ms. Vivian J. Harvey
Assistant County Attorney
Henderson County Attorney's Office
County Courthouse Room 100
Athens, Texas 75751

OR2011-14238

Dear Ms. Harvey:

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# 432526.

The Henderson County Sheriff's Department (the "department") received a request for information involving the requestor's child. 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.

Initially, we must determine whether the department complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You state the department received the present request for information on August 3, 2011. You requested this decision by United States mail meter-marked August 5. We note the submitted copy of the request reflects it was submitted to

another representative of Henderson County on July 27, 2011. Even in the event, however, the date of receipt of the request was July 27, your request for this ruling on August 5 would comply with the department's ten-business-day deadline under section 552.301(b). Therefore, we are satisfied the department complied with section 552.301 of the Government Code in requesting this decision and will consider your arguments against disclosure.

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 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). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and is therefore generally confidential under section 261.201(a). *See id.* § 261.001(1) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of sexual assault under Penal Code § 22.011); Penal Code §§ 22.011(c)(1) (defining “child”). In this instance, however, the requestor is a parent of the children who were the victims of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l) provides, however, that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will consider your claims under sections 552.101 and 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 state the submitted information is related to an ongoing investigation. Based on your representation, we conclude section 552.108(a)(1) is applicable in this instance. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

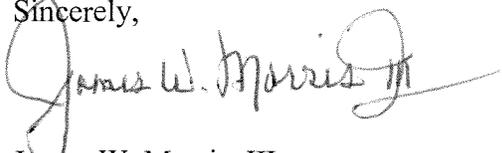
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identity of the complainant and a detailed description of the offense. Because the submitted information involves victims of alleged or suspected sexual assaults, the department would ordinarily be required to withhold the victims’ identities under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the requestor has a right of access to any information relating to her children that would be protected from public disclosure by common-law privacy. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not

implicated when individual requests information concerning herself).¹ Therefore, the department must release basic information in accordance with section 552.108(c). *See* ORD 127 at 3-4. The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.²

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 432526

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹Section 552.023 of the Government Code provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

²We 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.