



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2011-14726

Dear Mr. Walker:

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# 433030 (ORR # 2011-4056).

The Montgomery County Sheriff's Department (the "department") received a request for call slips for a specified address and a specified incident report. You state you will redact social security numbers under section 552.147(b)¹ of the Government Code and driver's license numbers pursuant to Open Records Decision No. 684 (2009).² You claim the submitted

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act.

²Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684 at 14-15. However, we note on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 22 (to be codified at Gov't Code §§ 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with sections 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 22 (to be codified at Gov't Code §§ 552.130(d)-(e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3)

information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

We first note you have not submitted the requested call slips for the specified address. To the extent any such information existed and was maintained by the department on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We note the submitted information is subject to section 552.101 of the Government Code.³ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant 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

in accordance with section 552.130, not Open Records Decision No. 684.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). You state the submitted information relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). Upon review, we find the submitted information is generally confidential under section 261.201(a) of the Family Code.

In this instance, however, the requestor is a parent of the child who is the subject of the report and is not alleged to have committed the suspected abuse. The department thus may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information otherwise excepted from required disclosure under the Act or other law must also be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your argument under section 552.108.

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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report at issue concerns an active criminal investigation. Based on your representation and our review, we conclude release of the submitted information would interfere with the

detection, investigation, or prosecution of a crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (specifying law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to the submitted information.

However, as you acknowledge, 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*, and includes the complainant’s identity and a detailed description of the offenses. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, basic information does not include motor vehicle information under section 552.130 of the Government Code. We first note you seek to withhold the entire investigative portion of the report under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a detailed description of the offenses be released. Accordingly, the department must release a sufficient portion of the narrative to encompass detailed descriptions of the offenses charged. We next note the complainant in the submitted report is also the reporting party for purposes of section 261.201 of the Family Code. Although the identity of the complainant is included in basic information, section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). See Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must (1) release a sufficient portion of the narrative to encompass detailed descriptions of the offenses charged and (2) withhold the reporting party’s identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.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, at (877) 673-6839. Questions concerning the allowable charges for providing public

⁴As noted, the requestor in this instance has a special right of access under section 261.201 of the Family Code to the information being released. Accordingly, if the department should receive another request for this information from a different requestor, the department should again request an opinion from this office.

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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 433030

Enc. Submitted documents

c: Requestor
(w/o enclosures)