



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2011-15366

Dear Ms. Mapes:

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# 433672 (ORR# W0006076).

The City of Killeen (the "city") received a request for all reports involving the requestor and two named individuals during a specified time period. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

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).

(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:

...

(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). Incident report number 10-011351 pertains to an investigation by the department of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code §§ 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age), 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor is a parent of the child victims listed in the information, and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *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 still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your arguments under section 552.108 of the Government Code for incident report number 10-011351, as well as for the remaining submitted reports.

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 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 incident report number 10-013062 pertains to an active criminal investigation. Based on your representation, we conclude the release of incident report number 10-013062 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 applicable to incident report number 10-013062.

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 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 incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818 pertain to closed criminal investigations in which no charges will be filed. Thus, you state incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818 relate to closed cases that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818.

However, we note, and 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense and the identity of the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold incident report number 10-013062 under section 552.108(a)(1) of the Government Code, and incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information from incident report number 10-011351, the City must withhold the identifying information

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.

In summary, with the exception of the basic information, the city may withhold incident report number 10-013062 under section 552.108(a)(1) of the Government Code. With the exception of the basic information, the city may also withhold incident report numbers 10-011351, 10-012164, 10-011366, and 10-012818 under section 552.108(a)(2) of the Government Code. In releasing the basic information from incident report number 10-011351, the city must withhold the identifying information 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.² The remaining basic information must be released.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 433672

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.