



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2011-16036

Dear Ms. Cohen:

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# 434934 (DPS PIR # 11-1974).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified search and information pertaining to an investigation that occurred during a specified time period. You claim that 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 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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.

Fam. Code § 261.201(a). You assert the submitted information is confidential because it relates to the investigation of alleged or suspected child abuse or neglect. Upon review, we agree the information in Exhibits A, C, and D pertains to an investigation of alleged or suspected child abuse or neglect that falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You state the department has not adopted a rule that governs the release of this type of information. Based on our review, we determine the information in Exhibits A, C, and D is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the department must withhold the information in Exhibits A, C, and D from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find the information in Exhibits B and E pertains to an investigation of tampering with or fabricating physical evidence with the intent to affect an investigation. As such, we find you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. We therefore conclude section 261.201 is not applicable to this information, and the department may not withhold Exhibits B and E under section 552.101 of the Government Code on this basis.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” 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 the information in Exhibits B and E pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information in Exhibits B and E.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976)

(summarizing the types of information considered to be basic information). Thus, with the exception of basic front page offense and arrest information, the department may withhold the information in Exhibits B and E from disclosure based on section 552.108(a)(2).<sup>1</sup>

In summary, the department must withhold the information in Exhibits A, C, and D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold Exhibits B and E 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 responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 434934

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.108(a)(4) for the information in Exhibit E.