



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Ms. Lizbeth Islas Plaster
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2011-16951

Dear Ms. Plaster:

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# 436760 (PIR 11-537).

The City of Lewisville (the "city") received two requests from the same requestor for incident report numbers 11-01819 and 11-01822. 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." 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:

- (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.

Fam. Code § 261.201(a), (k). You assert the submitted information consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). Upon review, we find some of the submitted information is within the scope of section 261.201(a). Although the requestor is a parent of the child victim listed in the submitted records, the information at issue also reflects the requestor was suspected of committing the alleged abuse. Therefore, we determine the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the city must withhold report number 11-01822 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). However, you have failed to demonstrate that report number 11-01819, which pertains to an investigation of alleged assault in which the requestor, an adult, is the victim, is confidential under section 261.201(a) of the Family Code. Therefore, the city may not withhold report number 11-01819 under section 552.101 of the Government Code on that basis.

You also assert report number 11-01819 is excepted from public disclosure under section 552.108 of the Government Code. 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 conviction or deferred

adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that report number 11-01819 relates to a concluded investigation conducted by the city's police department that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is generally applicable to report number 11-01819.

However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle Publishing Company 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* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold report number 11-01819 under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold report number 11-01822 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the city may withhold report number 11-01819 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 436760

Enc. Submitted documents

c: Requestor
(w/o enclosures)