



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Saida Guzman
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2011-17626

Dear Ms. Guzman:

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# 437770 (Ref. No. 27020).

The Edinburg Police Department (the "department") received a request for any reports made by a named individual regarding the requestor and a specified incident report. 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.

Initially, we note you have not submitted any information pertaining to reports made by a named individual regarding the requestor. To the extent such information existed and was maintained by the department on the date the department received the request for information, we presume the department has released it. If not, the department must do so at this time. *See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).*

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

¹The 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).

Code § 552.101. Section 552.101 encompasses information made confidential 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.

...

(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). Upon review, 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. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also 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). Thus, we find the submitted information is generally confidential under section 261.201. However, in this instance, the requestor is the father of the child victim listed in the report, and is not alleged to have committed the suspected abuse or neglect. Therefore, the submitted information may not be withheld from this requestor pursuant to section 261.201(a). *Id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). In addition, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your claim under section 552.108 of the Government Code for the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to an open investigation, and release of such information would interfere with the detection, investigation, and prosecution of crime. Based upon your representation, we conclude release of the information at issue would interfere with law enforcement, and agree section 552.108(a)(1) is applicable. *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).

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). Such basic, front-page information refers to the information held to be public in *Houston Chronicle* and includes, among others, a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. Consequently, the information being released does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released as basic information. *See* ORD 127. Accordingly, you must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.² As noted above, the identity of the party who made the report must be redacted. *See* Fam. Code § 261.201(1)(3).

²Because the requestor has a special right of access to information that would ordinarily be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

Thus, in releasing basic information, the department must withhold the information identifying 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 basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the information identifying 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.³

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/ag

Ref: ID# 437770

Enc. Submitted documents

c: Requestor
(w/o enclosures)
