



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2011

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2011-17968

Dear Mr. Hernandez:

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# 438276.

The Edinburg Police Department (the "department") received a request for a police report concerning a specified incident. You claim portions of the requested information are 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 exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). 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, so as to be generally confidential under section 261.201(a). *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of indecency with a child); Penal Code § 21.11(a) (defining child for purposes of offense of indecency with a child). In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, the department may not withhold any of the submitted information from this

requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will address your claim under section 552.108 of the Government Code.

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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the information you have marked would interfere with a pending criminal case. Based on your representation, we conclude section 552.108(a)(1) applies to the information at issue.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975); *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, the identity of the complainant and a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, the complainant is also the reporting party for purposes of section 261.201 of the Family Code. Section 261.201(l)(3) provides that, notwithstanding section 261.201(k), the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(l)(3). Thus, 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 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.¹

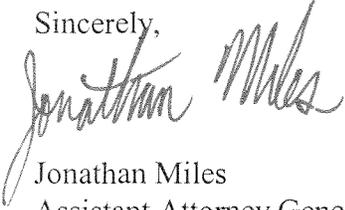
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹We note the present requestor has a right of access to information the department would be required to withhold from the general public. Should the department receive another request for this same information from a different requestor, the department should resubmit this information and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 438276

Enc. Submitted documents

c: Requestor
(w/o enclosures)