ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2011

Mr. Charles H. Weir
Assistant city Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2011-18809

Dear Mr. Weir:

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# 439881 (COSA File No. W003636).

The San Antonio Police Department (the "department") received a request for report number 11000631. The department claims the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 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[.]

Fam. Code § 261.201(a), (k), (l)(2). We agree the report was used or developed in an investigation of alleged child abuse under chapter 261. *See id.* §§ 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261), 101.003(a) (defining "child" for purposes of section 261.201 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). Therefore, the information is generally confidential under section 261.201(a) of the Family Code. In this instance, however, the requestor is a parent of the child who is the subject of the report, and is not alleged to have committed the suspected abuse. The department thus may not use section 261.201(a) to withhold the information from this requestor. *See id.* § 261.201(k). However, section 261.201(l)(2) states any information otherwise excepted from required

disclosure under the Act or other law must also be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider the department's remaining argument against disclosure of the 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the case is a pending case with the department. Based on this representation and our review, we conclude release of the information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (specifying law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to the information.

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* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the report under section 552.108(a)(1) of the Government Code.[1]

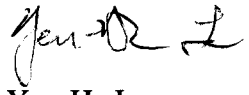
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, 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

[1]As noted, the requestor in this instance has a special right of access under section 261.201(k) of the Family Code to the information being released. Accordingly, if the department should receive another request for this information from a different requestor, the department must again request an opinion from this office.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 439881

Enc. Submitted documents

c: Requestor
(w/o enclosures)