



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2011

Mr. Brandon S. Shelby  
City Attorney  
City of Sherman  
P.O. Box 1106  
Sherman, Texas 75091-1106

OR2011-18917

Dear Mr. Shelby:

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# 440094.

The City of Sherman (the "city") received a request for incident report numbers 11-0005819, 11-0005820, and 11-0005851. You state the city has released a portion of the requested information to the requestor. You claim the submitted information, the three requested reports, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Although you did not raise the exception, one of the reports, number 11-0005820, is subject to section 552.101 of the Government Code.<sup>1</sup> Section 552.101 excepts from required public disclosure information made confidential by law, including information made confidential by statute. 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 [the Act] and may be disclosed only for purposes consistent

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). The report at issue was used or developed in an investigation of alleged child neglect. *See id.* § 261.001(1), (4) (defining “neglect” for the

purposes of chapter 261 of the Family Code); Penal Code § 22.041(c) (concerning offense of endangering a child). Based on our review, we find this report is within the scope of section 261.201 of the Family Code. However, the requestor is a parent of the child victims listed in the report, and the parent is not suspected of having committed the alleged neglect. In this instance, the city may not use section 261.201(a) to withhold this report from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, the city must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Furthermore, section 261.201(l)(2) states before a parent may have access to information under subsection (k), the custodian of records must redact any information that is excepted from required disclosure under the Act. The city asserts section 552.108 of the Act applies to the report. Therefore, we will consider your section 552.108 claim for report number 11-0005820, as well as the remaining two reports at issue.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the reports at issue would interfere with the detection, investigation, or prosecution of crime. *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). 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). You indicate the city has released some information to the requestor. Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1).<sup>2</sup>

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<sup>2</sup>In this case, the requestor has a right of access to some of the information under section 261.201(k) of the Family Code. If the city receives another request for this same report from an individual who does not have a right of access to the information under section 261.201(k), the city must seek another open records ruling from this office.

In summary, based on section 261.201(1)(3), the city must withhold the marked information in report number 11-0005820. With the exception of the basic information, the city may withhold the remaining information from public disclosure based on section 552.108(a)(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](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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 440094

Enc. Submitted documents

c: Requestor  
(w/o enclosures)