



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 27, 2011

Mr. Sol M. Cortez
Assistant City Attorney
El Paso City Prosecutor's Office
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-2516

OR2011-18985

Dear Mr. Cortez:

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# 445179.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted 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." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find you have not explained how the submitted information was used in an investigation conducted under chapter 261. Consequently, we find you have failed to adequately demonstrate how this report was used or developed in an investigation of abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). We therefore conclude section 261.201 is not applicable to the submitted information. Accordingly, the department may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.302(e)(1)(A). You inform us that the submitted report pertains to an investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted report.

Section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 at 186-88 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted report 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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 445179

Enc. Submitted documents

cc: Requestor
(w/o enclosures)