



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2011

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2011-19170

Dear Mr. Mann:

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# 440789 (GCA #11-0827).

The Garland Police Department (the "department") received a request for two specified incident reports. You state you will release some of the requested information to the requestor. You claim that 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(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 a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* 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). Because the submitted reports pertain to an investigation of alleged or suspected child abuse or neglect, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for

purposes of chapter 261 of the Family Code includes aggravated sexual assault under Penal Code section 21.021); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.021 as a minor younger than 17 years of age). However, the requestor is a parent of the child victim named in these reports, and the requestor is not accused of committing the alleged or suspected abuse. Accordingly, as you acknowledge, the department may not withhold from this requestor information concerning the alleged abuse or neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k).

Section 261.201(l)(1) provides, however, that any personally identifiable information regarding a victim or witness under 18 years of age who is not the requestor’s child must be withheld from disclosure. *See id.* § 261.201(l)(1). Section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, 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. We have also marked information in the submitted documents that identifies a juvenile witness who is not the requestor’s child. The city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Government Code. In addition, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your argument under section 552.108 of the Government Code for the information you have marked in the reports.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted reports relate to ongoing criminal investigations. You also state that release of this information would interfere with law enforcement. Based upon your representations and our review, we conclude that release of the information you have marked in the submitted reports 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). Thus, the department may withhold the information you have marked in the submitted reports under section 552.108(a)(1) of the Government Code.

In summary: (1) the department must withhold the information that identifies a juvenile witness, as well as the reporting party’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) and (l)(3), respectively, of the Family Code; and (2) the department may withhold the

information you have marked in the submitted reports under section 552.108(a)(1) of the Government Code. The department must release the remaining information.<sup>2</sup>

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/eb

Ref: ID# 440789

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because this requestor has a special right of access to the information being released, if the department receives another request for this information from an individual other than this requestor, the department must again seek a decision from this office.