



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-01934

Dear Ms. Middlebrooks:

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# 445160 (DPD # 2011-10850).

The Dallas Police Department (the "department") received a request for information concerning a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

We note the submitted information is subject to section 552.101 of the Government Code.² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 encompasses information protected 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed in an investigation under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011 and aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.021 and 22.011 as a person younger than 17 years of age). Thus, the submitted information is generally confidential under section 261.201(a) of the Family Code.

In this instance, however, the requestor is the mother 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 submitted information from this requestor. Fam. Code § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). Therefore, the department must withhold the reporting party’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, 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 your arguments under section 552.108 and 552.130.

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). You state the requested information concerns a pending criminal investigation. Based on your representation and our review, we conclude release of the submitted 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, the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). Therefore, the department must withhold the information you have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the

Family Code. The department may withhold the information you have marked under section 552.108 of the Government Code and must withhold the information you marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 445160

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As noted, the requestor in this instance has a special right of access under section 261.201 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.