



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2012

Ms. Kristen Hamilton
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-05314

Dear Ms. Hamilton:

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# 450495.

The El Paso Police Department (the “department”) received a request for three categories of information pertaining to a named crisis shelter, including a specified e-mail. You state the department has released some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have marked some of the submitted information as nonresponsive to the request for information. We have marked some additional information that is not responsive because it falls outside the time period specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release any nonresponsive information in response to this request. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

We note that some of the requested information was the subject of a previous ruling by this office. In Open Records Letter No. 2012-03358 (2012), this office ruled that the information

at issue may be withheld under section 552.108 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on the prior ruling as a previous determination and withhold the requested information we previously ruled on in accordance with Open Records Letter No. 2012-03358. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the previous decision, we will address your arguments.

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. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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 [the Family 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). We find report number 11-181241 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 or in providing services as a result of an investigation, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude report number 11-181241 is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.¹

¹As we make this determination, we do not address your remaining claims for this information.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You seek to withhold some of the submitted reports under section 552.108(a)(2), and state that these reports pertain to cases that did not result in conviction or deferred adjudication. While you also claim section 552.108(a)(2) as an exception to disclosure of Administrative Case number IA11-339, we note you did not submit this case for our review; thus, we assume the department has already released Administrative Case number IA11-339. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to the reports we have marked.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ’g 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information and the information you have marked as having been released, the department may withhold the reports we have marked under section 552.108(a)(2) of the Government Code. *Cf.* Gov’t Code § 552.007 (information voluntarily released to member of public may not subsequently be withheld from public, unless public disclosure is expressly prohibited by law or information is confidential under law); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988).

We understand you to claim, however, that all or some of the basic information in report number 11-186143 is protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental

or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that generally only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You note report number 11-186143 is related to an investigation of an alleged sexual assault. Thus, the department must withhold the victim's identifying information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, no portion of the remaining basic information in report 11-186143 may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold some of the remaining submitted information under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a motor vehicle title or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the department must withhold the information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold report number 11-181241 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information and the information you have marked as having been released, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the victim's identifying information in report number 11-186143, which we have marked, under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.130 of the Government Code. The remaining responsive information must be released.²

²We note the information to be released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 450495

Enc. Submitted documents

c: Requestor
(w/o enclosures)