



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2012

Mr. Cary L. Bovey
For City of Navasota
Law Office of Cary L. Bovey, P.L.L.C.
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664

OR2012-05637

Dear Mr. Bovey:

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# 451253.

The Navasota Police Department (the "department"), which you represent, received a request for a specified police report. You have marked social security numbers to withhold from release under section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 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. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

¹Section 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).

[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.

Fam. Code § 261.201(a). You claim the submitted information pertains to an investigation of alleged abuse or neglect of a child. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). Because we can not determine from the submitted information whether the victims in this instance were under 17 years of age at the time of the alleged abuse, we must rule conditionally. Therefore, if any of the victims listed in the submitted report were under 17 years of age at the time of the alleged abuse, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If none of the victims were under 17 years of age at the time of the alleged abuse, then the department may not withhold the submitted information on that basis. Therefore, we will address your remaining arguments against disclosure.

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 the 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 that the requested police report relates to an ongoing criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the information 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes, among other things, an identification and description of the complainant, but does not include identifying information of a victim, unless the victim is also the complainant, or driver's license information subject to section 552.130 of the Government Code. See ORD 127 at 3-4; see also Gov't Code § 552.130. In this instance, we note none of the alleged victims are the complainant. Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code.²

Next, you raise section 552.135 of the Government Code to withhold some of the basic information. Section 552.135 provides the following:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. We note section 552.135 is applicable only to information held by a school district. See *id.* § 552.135(d); see also Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection). In this instance, the submitted information is held by the department. We therefore determine section 552.135 is not applicable to any of the information at issue in the submitted report. Accordingly, the department may not withhold any of the basic information pursuant to section 552.135 of the Government Code.

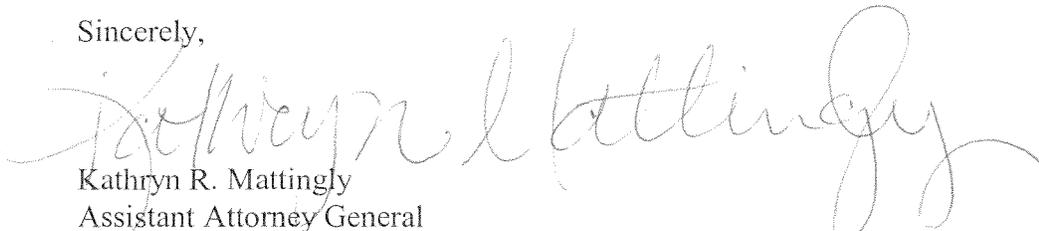
In summary, if any of the victims listed in the submitted report was under 17 years of age at the time of the alleged abuse, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If none of the victims were under 17 years of age at the time of the alleged abuse, then with the exception of basic information, the department may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 451253

Enc. Submitted documents

c: Requestor
(w/o enclosures)