



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2012

Ms. Kristen Hamilton  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2012-06100

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# 451955.

The El Paso Police Department (the "department") received a request for all information, including supplements and photographs, related to four types of incidents involving the requestor during a specified time frame. You state some information has been released to the requestor. You claim the remaining requested 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.

Initially, we note you have marked the requestor's social security number for redaction in the information you state you will release. 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. *See* Gov't Code § 552.147(b). You have also marked the license plate number and vehicle identification number ("VIN") of the requestor's vehicle in report number 09-327100 as excepted from disclosure under section 552.130 of the Government Code. However, section 552.023 of the Government Code provides the requestor a special right of access, beyond that of the general public, to information concerning himself that is protected from public disclosure by laws intended to protect his privacy interests. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Sections 552.130 and 552.147 protect personal privacy. Therefore, the requestor has a right of access to his social security number, license

plate number, and VIN under section 552.023 of the Government Code and they may not be withheld from him on the basis of section 552.147(b) or 552.130 of the Government Code.

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 and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In your brief, you assert section 552.108(a)(1) as an exception to disclosure of report numbers 09-326035 and 09-327100. However, you have marked these reports as having been released to the requestor. Section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver).* Therefore, by releasing report numbers 09-326035 and 09-327100, you have waived your claim under section 552.108(a)(1) for that information and may not withhold the reports under section 552.108(a)(1). However, we will consider your argument under section 552.108(a)(1) for the photographs associated with report number 09-327100 that were not previously released. You state report number 09-327100 relates to an ongoing investigation that is currently pending with the El Paso Police Department. Based on this representation and our review, we conclude release of the photographs associated with report number 09-327100 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the photographs on the submitted CD associated with report number 09-327100 under section 552.108(a)(1) of the Government Code. We further note although you have marked report number 10-130016 as active and filed, you did not assert section 552.108(a)(1) or make any arguments under section 552.108(a)(1) for report number 10-130016 in your brief. Accordingly, the department may not withhold report number 10-130016 on the basis of section 552.108(a)(1) of the Government Code. *See Gov’t Code §§ 552.301, .302.*

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.” *Id.* § 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). In your brief you assert section 552.108(a)(2) as an exception to disclosure of report number 10-114026. However, you have marked a portion of report number 10-114026 as having been released to the requestor. As discussed above, you have waived your claim under section 552.108 for the information that was previously

released. However, we will consider your argument under section 552.108(a)(2) for the remainder of report number 10-114026 and the associated photographs that were not previously released. You state report number 10-114026 relates to a case that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to the remainder of report number 10-114026 and its associated photographs on the submitted CD. Accordingly, the department may withhold the remainder of report number 10-114026 and its associated photographs on the submitted CD under section 552.108(a)(2) of the Government Code.

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 encompasses information made confidential by other statutes, including 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.

Fam. Code § 261.201(a), (k). You assert report number 10-194045 was used or developed in an investigation of alleged child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003 (defining “child” for purposes of Fam. Code title 5). We agree report number 10-194045 is within the scope of section 261.201(a). In

this instance, the requestor is the parent of one of the child victims listed in the report. However, the requestor is alleged to have committed the abuse or neglect at issue in the report. Therefore, report number 10-194045 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.001(k). Accordingly, we find report number 10-194045 and its associated photographs are confidential under section 261.201(a) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 encompasses information protected by laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement with the criminal justice system. Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). The department must withhold the information we have marked in report number 10-130016 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator’s license or driver’s license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1), (2). The department must withhold the information we have marked under section 552.130 of the Government Code in report number 10-130016.

In summary, the department may withhold the photographs associated with report number 09-327100 under section 552.108(a)(1) of the Government Code. The department may withhold the remainder of report number 10-114026 and its associated photographs

under section 552.108(a)(2) of the Government Code. The department must withhold report number 10-194045 and its associated photographs under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked in report number 10-130016 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we have marked in report number 10-130016 under section 552.130 of the Government Code. The remainder of report number 10-130016 must be released.<sup>1</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,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 451955

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information being released contains the social security number of an individual other than the requestor. 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. Gov't Code § 552.147(b).