



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 30, 2012

Ms. Angela M. Deluca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2012-06214

Dear Ms. Deluca:

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# 452815.

The Bryan Police Department (the “department”) received a request for three specified police reports involving three named individuals. You explain that as two of the specified report numbers were assigned in error, two of the requested reports do not exist.<sup>1</sup> You claim the submitted report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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>2</sup> Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov’t Code §§ 552.007, .352*; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(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). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). In this instance, however, the requestor is a parent of the children who were the victims of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, pursuant to section 261.201(k), the department may not withhold the submitted information

from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Section 261.201(l) also provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will address your claim for the submitted information 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 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). You indicate the submitted information is related to a concluded case that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) of the Government Code is generally applicable to the submitted information.

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including detailed descriptions of the offenses, even if the information does not actually appear on the front page of an offense or arrest report. In releasing basic information, the department must withhold the information we have marked that identifies the reporting party 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 rest of the submitted information under section 552.108(a)(2) of the Government Code.<sup>3</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.

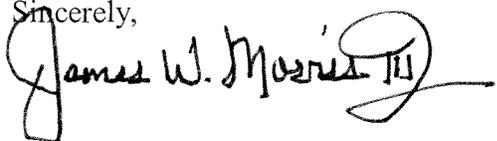
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>3</sup>We note the requestor has a right of access in this instance to information the department would be required to withhold from the general public. Should the department receive another request for this same information from a different requestor, the department should resubmit this information and request another ruling. *See* Gov’t Code §§ 552.301(a), .302.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, stylized initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 452815

Enc: Submitted documents

c: Requestor  
(w/o enclosures)