



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2012

Mr. Tom Donnelly
City Secretary/Administrator
City of Hallettsville
101 North Main Street
Hallettsville, Texas 77964-2727

OR2012-08269

Dear Mr. Donnelly:

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# 455023.

The City of Hallettsville (the "city") received a request for all reports concerning the requestor and a specified individual at two specified addresses. You state you have released some of the requested information to the requestor with social security numbers and driver's license numbers not belonging to the requestor redacted.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous ruling by this office. In Open Records Letter No. 2012-00277 (2012), this office ruled that the city must withhold IR-10-000344 in its entirety under section 552.101 of the Government Code

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to 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 under the Act. *Id.* § 552.147(b).

in conjunction with section 261.201 of the Family Code, and the city may withhold the marked information in IR-10-000320, IR-11-000230, and IR-11-000329 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 city must continue to rely on the prior ruling as a previous determination and withhold or release the requested information we previously ruled on in accordance with Open Records Letter No. 2012-00277. *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, because the submitted information 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 section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

[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). Upon review, we find the reports submitted in Exhibits B and C were used or developed in the city's police department's investigations of alleged abuse of a child, and therefore, are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(A) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261); *see also* Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). The submitted information reflects the requestor is the parent of the child victim in both reports. In regards to the report submitted in Exhibit C, the requestor is the individual alleged to have committed the alleged abuse. Accordingly, the report submitted in Exhibit C may not be provided to the requestor pursuant to section 261.201(k). *See* Fam. Code § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue). Thus, the report submitted in Exhibit C is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

In regards to the report submitted in Exhibit B, the requestor is not the individual alleged to have committed the abuse. *See id.* § 261.201(k). Accordingly, the city may not withhold Exhibit B from the requestor under section 261.201(a). *Id.* However, the city must withhold the identity of the person who made the report of abuse, which we have marked. *Id.* § 261.201(1)(3). Additionally, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your arguments under section 552.108 of the Government Code for this information.

The remaining information in Exhibit B contains a mental health record subject to section 611.002 of the Health and Safety Code. Section 611.002 is also encompassed by section 552.101 of the Government Code and provides, "[c]ommunications between a patient and a professional, records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional are confidential." Health & Safety Code

§ 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Therefore, the mental health record we have marked is generally confidential under section 611.002. However, sections 611.004 and 611.0045 of the Health and Safety Code permit disclosure of mental health records to a patient or a parent of a minor patient. *Id.* § 611.004; Open Records Decision No. 565 (1990). We note, a statutory right of access overcomes general exceptions to disclosure under the Act, including your claim under section 552.108. *See* Open Records Decision Nos. 613 (1993), 451 (1988). Thus, the mental health record we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

We now address your argument under section 552.108 of the Government Code for the remaining information. Section 552.108(a) 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 the information you have marked in Exhibit B relates to a pending criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of the information you have marked in Exhibit B 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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information you have marked in Exhibit A pertains to cases that did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the marked information in Exhibit A.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you have

marked the entire narrative portion of the reports at issue as information you seek to withhold under section 552.108. Consequently, the information being released does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released as basic information. *See* ORD 127. Accordingly, the city must release sufficient portions of the marked narratives to encompass a detailed description of each offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of basic information, including a detailed description of each offense, the city may withhold the information you have marked in Exhibit B under section 552.108(a)(1) of the Government Code and the information you have marked in Exhibit A under section 552.108(a)(2) of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2012-00277 and withhold or release the information in IR-10-000344, IR-10-000320, IR-11-000230, and IR-11-00329 in accordance with that ruling. The mental health record we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The city must withhold the report submitted in Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the identity of the reporting party in the report submitted in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of basic information, which includes a detailed description of the offense, the city may withhold the information you have marked in Exhibit B under section 552.108(a)(1) of the Government Code and the information you have marked in Exhibit A under section 552.108(a)(2) of the Government Code.²

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,

²We note this requestor has a special right of access under section 261.201(k) of the Family Code to the information in Exhibit B being released. Additionally, the information to be released in Exhibit A includes the requestor's motor vehicle information, which the city would be required to withhold from the general public under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to her motor vehicle information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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 cursive script that reads "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 455023

Enc. Submitted documents

c: Requestor
(w/o enclosures)