



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2012

Mr. B. Chase Griffith
For City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-08922

Dear Mr. Griffith:

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# 456029 (ORR# 10-5237).

The McKinney Police Department (the "department"), which you represent, received a request for all reports, warrants, 9-1-1 calls, and dispatch communications associated with a specified report number. You claim the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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:

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, we find the submitted information was used or developed in an investigation by the department of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1)(H) (definition of child abuse includes “causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic”); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is subject to section 261.201. In this instance, however, the requestor is the father of the child victim

listed in the submitted information. Furthermore, the requestor is not accused of committing the alleged or suspected abuse. Thus, the department may not withhold the submitted information from the requestor under section 261.201(a) of the Family Code. *See id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). In addition, section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(1)(2). Thus, because you raise section 552.108 of the Government Code for the submitted information, we will address your argument against disclosure.

First, however, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court documents, which we have marked, subject to section 552.022(a)(17). The department may only withhold this information if it is confidential under the Act or other law. Although you seek to withhold the court documents under section 552.108 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).* Therefore, the department may not withhold the marked court documents under section 552.108. However, we note some of this information contains information that is subject to section 552.130 of the Government Code, which makes information confidential under the Act. Therefore, we will consider the applicability of this exception to the court documents. We will also address your claim under section 552.108 for the remaining information that is not subject to section 552.022.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Therefore, the department must withhold the information we have marked in the court documents subject to section 552.022 under section 552.130. The department must release the remaining information in the marked court documents.

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[.]” *Id.* § 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). You state the remaining information pertains to a pending criminal case. Based on your representation and our review, we conclude release of the remaining information 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to this information.

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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As previously noted, section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *See* Fam. Code 261.201(l)(3). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1). However, in releasing basic information, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.²

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code and release the remaining information in the marked court documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

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.

²The requestor has a special right of access under section 261.201(k) of the Family Code to some of the information being released. *See* Fam. Code § 261.201(k). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 456029

Enc. Submitted documents

c: Requestor
(w/o enclosures)