



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2012

Mr. David M. Hamilton
City Attorney
City of Reno
3830 Farm Road 195
Paris, Texas 75462-1621

OR2012-10265

Dear Mr. 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# 458153.

The Reno Police Department (the "department") received a request for all calls and reports involving three named individuals. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime [or]

(2) 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)(1), (2). Section 552.108(a)(1) is applicable to information pertaining to a pending criminal investigation or prosecution, while section 552.108(a)(2)

protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why the exception applies to the submitted information. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us that some of the submitted information pertains to an ongoing criminal investigation and, thus, is subject to section 552.108(a)(1). However, you have submitted multiple reports to this office and you have not identified which reports pertain to this pending investigation. You also inform us that some of the submitted information pertains to closed cases that ended without convictions and deferred adjudications and, thus, is subject to section 552.108(a)(2). However, you have not specified which reports are closed. Thus, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See Gov't Code* §§ 552.301(e)(1)(A), .301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of information). Accordingly, we conclude the department has failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code to any of the submitted information, and it may not be withheld on either basis.

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 *See id.* § 552.101. Section 552.101 encompasses section 48.101 of the Human Resources Code, which provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and

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

Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)–(b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *Id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a police department generally are not subject to section 48.101.

In this instance, most of the submitted information was created by the department in connection with a criminal investigation conducted by the department. However, we note a portion of the submitted information, which we have marked, was created by the Adult Protective Services Division (the “division”) of the DFPS under chapter 48. Because the Legislature expressly made all information used by the division in its Chapter 48 investigations confidential, the information we have marked is confidential under section 48.101. Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101(b)–(g) (permitting release of confidential information only in certain circumstances). You do not indicate, nor does it appear, an exception to confidentiality applies in this instance. Accordingly, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.130(a)(1) of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from required public disclosure. Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The department must withhold the information we marked under section 552.130(a)(1) of the Government Code. The department must release the remaining 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 458153

Enc. Submitted documents

c: Requestor
(w/o enclosures)