



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2012

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2012-11268

Dear Mr. Hernandez:

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# 459731.

The Edinburg Police Department (the "department") received a request for all police reports pertaining to a specified address and a named individual, including two specified police reports. You claim that 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.

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 exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent 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.

(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 police report for case number 2010-00005302 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we conclude this police report is within the scope of section 261.201. However, the submitted information reveals that the requestor is a parent of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse. Thus, the police report at issue may not be withheld from the requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, before the department provides any of this information to the requestor, the department must redact the identity of the person who made the report. *See id.* § 261.201(l)(3). Accordingly, the department must withhold the identifying information of the reporting party listed in the police report for case number 2010-00005302, which we have marked, under section 552.101 of the Government

Code in conjunction with section 261.201(1)(3) of the Family Code.¹ In addition, the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(1)(2). As you raise section 552.101 of the Government Code for the remaining information in the police report for case number 2010-00005302, we will consider the applicability of this section to this information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 393 at 2, 339 (1982).

In this instance, the police report for case number 2010-00005302 relates to sexual assault allegations. We note the submitted information reveals that the requestor knows the identity of the alleged sexual assault victim at issue. Thus, withholding only the alleged victim's identifying information from the requestor would generally not preserve the alleged victim's common-law right to privacy. However, the police report at issue concerns the requestor's child. Because the requestor is the minor child's parent, she is the child's authorized representative. Under section 552.023 of the Government Code, "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." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Therefore, the department may not withhold from this requestor any portion of the police report for case number 2010-00005302 under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

You raise section 552.108(a)(1) of the Government Code for portions of the police reports for case numbers 2012-00016564 and 2012-00016589. This section 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). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception applies to the information it seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You inform us that the police reports at issue pertain to open criminal investigations. Based on your representation and our review, we conclude the release of these police reports 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). Thus, section 552.108(a)(1) is applicable to the police reports for case numbers 2012-00016564 and 2012-00016589.

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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note the department has marked the entire narrative portions of the police reports at issue under section 552.108. However, the remaining information in these police reports does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Thus, with the exception of detailed descriptions of the offenses, the department may withhold the information you have marked in the police reports for case numbers 2012-00016564 and 2012-00016589 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the identifying information of the reporting party we have marked in the police report for case number 2010-00005302 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. With the exception of detailed descriptions of the offenses, the department may withhold the information you have marked in the police reports for case numbers 2012-00016564 and 2012-00016589 under section 552.108(a)(1) of the Government Code. The department must release the remaining information.²

²We note the requestor has a special right of access to 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 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# 459731

Enc. Submitted documents

c: Requestor
(w/o enclosures)