



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Ms. Kathleen Weisskopf
Police Legal Advisor
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-11938

Dear Ms. Weisskopf:

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# 461945 (Police Dept. Ref. # 7942-053112).

The Arlington Police Department (the "department") received a request for report numbers 120012494 and 110063334. You state you have released some of the requested information. You claim that 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[.]

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find report number 1212494 relates to a child custody dispute. Furthermore, you have not demonstrated how report number 1212494 was used or developed by the department in an investigation under chapter 261.201. *See id.* § 261.201(a). Accordingly, the department may not withhold report number 1212494 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, upon review, we agree report number 110063334 was used or developed by the department in its 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 report number 110063334 is within the scope of section 261.201. However, report number 110063334 reveals that the requestor may be the managing conservator or other legal representative of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse in report number 110063334. Thus, if the requestor is not a managing conservator or other legal representative of the child victim, then the department must withhold report number 110063334 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim’s

managing conservator or other legal representative, then the department may not use section 261.201(a) to withhold report number 110063334 from the requestor. *See* Fam. Code § 261.201(k). We note section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Additionally, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your arguments under section 552.108 of the Government Code for report number 110063334, as well as for report number 120012494.

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[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 report numbers 120012494 and 110063334 relate to active criminal investigations. Based upon your representations and our review, we conclude that release of report numbers 120012494 and 110063334 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 generally applicable to the submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). If the requestor is the managing conservator or legal representative of the child victim, then, with the exception of basic information, the department may withhold report number 110063334 under 552.108(a)(1) of the Government Code. However, in releasing the basic information for report number 110063334, the department must withhold the identifying information of the reporting party pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining basic information for report number 110063334 must be released to the requestor.¹ With the exception of basic information, which must be released, the department may withhold report number 120012494 under section 552.108(a)(1) of the Government Code.

¹We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

In summary, if the requestor is not a managing conservator or other legal representative of the child victim, then the department must withhold report number 110063334 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a managing conservator or other legal representative of the child victim, with the exception of basic information, the department may withhold report number 120012494 under section 552.108(a)(1) of the Government Code. However, in releasing the basic information for report number 110063334, the department must withhold the identifying information of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With the exception of basic information, which must be released, the department may withhold report number 120012494 under section 552.108(a)(1) of the Government 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.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 461945

Enc. Submitted documents

c: Requestor
(w/o enclosures)