



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2012

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
PO Box 839966  
San Antonio, Texas 78283

OR2012-12021

Dear Mr. Weir:

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# 460817 (COSA File No. W007477).

The San Antonio Police Department (the "department") received a request for report number 12046280. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

We note the submitted information is subject to section 552.101 of the Government Code.<sup>1</sup> 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 made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup>The 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).

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). Upon review, we find the submitted report was used or developed in an investigation under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011 and aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.021 and 22.011 as person younger than 17 years of age). Therefore, this information is within the scope of section 261.201. However, the requestor

may be the parent, managing conservator, or other legal representative of the child victim. Because we cannot determine if the requestor is a legal representative of the child victim, we rule conditionally. If the requestor is not a legal representative of the child victim, the submitted information is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

However, if the requestor is a legal representative of the child victim, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *See id.* § 261.201(k). However, section 261.201(1)(2) states any information otherwise excepted from required disclosure under the Act or other law must be redacted before information is released under section 261.201(k). *Id.* § 261.201(1)(2). Therefore, pursuant to section 261.201(1)(2), we will consider your argument against disclosure of the submitted report.

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). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation. Based on your representation and our review, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (specifying 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) of the Government Code applies to the submitted 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes the complainant’s identity. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the complainant in the submitted report is also the reporting party for purposes of section 261.201. Section 261.201(1)(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(1)(3). Thus, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the reporting party’s identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not a legal representative of the child victim, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the legal representative of the child victim, then, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(2) 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.

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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/som

Ref: ID# 460817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)