ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Mr. Samuel B. Katz
Chief Appellate Prosecutor
Criminal District Attorney's Office
Comal County
150 North Seguin, Suite 307
New Braunfels, Texas 78130

OR2012-13501

Dear Mr. Katz:

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# 463126 (File No. 12-OR-065).

The Comal County Sheriff's Office (the "sheriff's office") received a request for information related to a specified case number. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.[1]

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 other statutes make confidential. Section 261.201 of the Family Code provides in 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

[1]This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff's office to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

> 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 department 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). You contend the submitted information is confidential under section 261.201(a). We find the information at issue was used or developed in an investigation of alleged or suspected child neglect under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a)(2). *See id.* §§ 101.003 (defining "child" for purposes of Fam. Code title 5), 261.001(4) (defining "neglect" for purposes of Fam. Code ch. 261). In this instance, however, the requestor may be a parent, managing conservator, or other legal representative of the child who was the victim of the alleged or suspected neglect, and the requestor is not accused of committing the neglect. Pursuant to section 261.201(k), the submitted information may not be withheld from

the requestor on the basis of section 261.201(a) if he is the child's parent, managing conservator, or other legal representative. *See id.* § 261.201(k). As we are unable to determine whether the requestor is the child's parent, managing conservator, or other legal representative, we must rule conditionally. Thus, if the requestor is not the child's parent, managing conservator, or other legal representative, the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. But if he is the child's parent, managing conservator, or other legal representative, the submitted information may not be withheld from the requestor under section 552.101 on the basis of section 261.201(a). Section 261.201(l) provides, however, that the identity of the reporting person must be withheld. *See id.* § 261.201(l(3). Section 261.201(l) also provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, in the event the submitted information may not be withheld from the requestor under section 261.201(a), we will address your claim under section 552.108 of the Government Code.

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 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 release of the submitted information would interfere with a pending criminal investigation and potential prosecution. Based on your representations, we conclude section 552.108(a)(1) is applicable in this instance. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note 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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff's office must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. In releasing basic information, the sheriff's office must withhold the information related to the reporting person we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The sheriff's office may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.

In summary, (1) if the requestor is not the victim's parent, managing conservator, or other legal representative, the sheriff's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the

Family Code; (2) if the requestor is the child's parent, managing conservator, or other legal representative, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released; and (3) in releasing basic information, the sheriff's office must withhold the information related to the reporting person we have marked under section 552.101 in conjunction with section 261.201(l)(3) of the Family Code.[2]

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,

James W. Morris III

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 463126

Enc: Submitted documents

c: Requestor
(w/o enclosures)

[2]As we are able to make these determinations, we need not address the other exceptions you claim, except to note section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).