



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2012

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

OR2012-13587

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# 463687 (COSA File No. W008096).

The City of San Antonio (the "city") received a request for the incident and offense reports for case number 12079438. You claim the requested 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 agree the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person under 17 years of age). Therefore, we conclude this information is subject to section 261.201.

We note the requestor may be a parent, managing conservator, or other legal representative of the child listed as the victim of the alleged or suspected abuse. Moreover, the requestor is not alleged to have committed the alleged abuse. Therefore, the submitted information may not be withheld from this requestor, if she is the child victim’s parent, managing conservator, or other legal representative, on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). In this instance, however, the submitted information uses a pseudonym to identify the child victim. Thus, we are unable to determine whether the requestor is the child victim’s parent, managing conservator, or other legal representative. Accordingly, we rule

conditionally. Thus, if the requestor is not the child victim's parent, managing conservator, or other legal representative, then the city 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.

If the requestor is a parent, managing conservator, or other legal representative of the child victim, then the city may not use section 261.201(a) to withhold the submitted information from this requestor. *See id.* Section 261.201(l)(3), however, provides that before a parent, managing conservator, or other legal representative can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *See id.* § 261.201(l)(3). In addition, section 261.201(l)(2) provides that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also assert section 552.108 of the Government Code for the submitted information, we will address your argument under this section.

Section 552.108(a)(1) 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 claiming section 552.108 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 inform us that the submitted information pertains to a criminal case that is still open. Based on your representation, we conclude the release of this information 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 submitted information.

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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city 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(l)(3) of the Family Code. *See* Fam. Code § 261.201(l)(3).

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the city 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 a parent, managing conservator, or other legal representative the child victim, then with the exception of basic information, the city may

withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city 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.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 463687

Enc. Submitted documents

c: Requestor  
(w/o enclosures)