



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2012

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

OR2012-13924

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# 464136 (Edinburg Ref. No. 38393).

The Edinburg Police Department (the "department") received a request for a specified police report. You claim portions of the submitted information are 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 other statutes make confidential, such as section 48.101 of the Human Resources Code, which provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (“DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). Section 48.051 of the Human Resources Code provides that “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency.¹ *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made by a police department generally are not subject to section 48.101. You assert portions of the submitted information are confidential under section 48.101. The submitted information consists of a report created by the department regarding the alleged abuse of an elderly person. You provide no arguments explaining how the information at issue was used or developed in any investigation conducted by an entity authorized to conduct an investigation under chapter 48 of the Human Resources Code. Therefore, the department may not withhold any of the information you have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources 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 inform us the information at issue pertains to an open criminal investigation. Based on this representation and our review, we conclude the release of the information at issue 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 information at issue.

Section 552.108, however, does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We note you have marked the entire narrative portion of the report to withhold. Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense in the narrative portion of the report. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

information). Thus, with the exception of basic information, which must include a sufficient portion of the narrative to encompass a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 464136

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information to be released includes the requestor's driver's license number which the department would be required to withhold from the general public under section 552.130(a)(1) of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right of access to his own driver's license number under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the department receives another request for this same information from a person who would not have a right of access to the present individual's private information, section 552.130(c) authorizes the department to redact this driver's license number.