



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2012

Ms. Sue Koriath
Assistant Criminal District Attorney
Kaufman County
100 West Mulberry
Kaufman, Texas 75142

OR2012-14942

Dear Ms. Koriath:

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# 465402.

The Kaufman County District Attorney's Office (the "district attorney's office") received a request for the police reports related to two specified cases. You claim 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. Section 552.101 encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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[.]

...

Fam. Code § 261.201(a), (k), (l)(2). You state the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note, however, the requestor in this case is an attorney for a parent of the child victim named in the report, and the requestor’s client is not accused of having committed the abuse. Therefore, the district attorney’s office may not withhold from this requestor information concerning the alleged abuse that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the district attorney’s office provides information concerning this report, it must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). As you raise section 552.108 as an exception, we will consider its applicability to this information.

We note the submitted information contains a “Warning of Rights” form signed by a magistrate. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the

information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you claim section 552.108 of the Government Code for this information, we note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Thus, the district attorney's office may not withhold the court-filed document we have marked under section 552.108 of the Government Code. As you raise no further exceptions for this information, it must be released.

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 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 state the remaining information relates to a pending prosecution, and release of the information would jeopardize the investigation and 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) (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). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable.

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). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to encompass a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

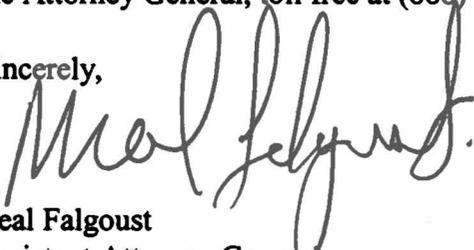
In summary, the district attorney's office must release the information we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

¹We note the requestor has a special right of access to the information being released. *See* Fam. Code § 261.201(k). Therefore, if the district attorney's office receives another request for this same information from a different requestor, it must again seek a ruling from our office.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, prominent initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 465402

Enc. Submitted documents

c: Requestor
(w/o enclosures)