



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2012

Ms. Lisa D. Mares
Counsel for the City of Crowley
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2012-15071

Dear Ms. Mares:

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# 466088.

The City of Crowley (the "city"), which you represent, received a request for the personnel file of the requestor's client. You state you have released some of the requested information to the requestor. You claim that 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 of the Government Code encompasses information other statutes make confidential, including section 261.201(a) of the Family Code, which provides:

(a) [T]he 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.

Fam. Code § 261.201(a). You state Exhibit B was used or developed in an investigation of alleged or suspected child abuse under chapter 261 by the city's police department. *See id.* § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). We note Exhibit B relates to an administrative investigation of a city police department officer. However, the submitted internal affairs report in Exhibit B contains a report and photographs that were used or developed in an investigation of alleged or suspected child abuse. This information, which we have marked, is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we conclude you have failed to demonstrate that any of the remaining information at issue was used or developed in an investigation under chapter 261 of the Family Code. Accordingly, section 261.201(a) is not applicable to any of the remaining information in Exhibit B, and no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). In this instance, Exhibits C-1 and C-2 pertain to an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state Exhibits C-1 and C-2 relate to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on these representations and our review, we find section 552.108(a)(2) of the Government Code is applicable to the information at issue.

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 basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Accordingly, the city must release basic offense and arrest 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. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold Exhibits C-1 and C-2 under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the city may withhold Exhibits C-1 and C-2 under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 466088

Enc. Submitted documents

c: Requestor
(w/o enclosures)