ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2012

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

OR2012-15258

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# 465953 (EPD Reference# 39427)

The Edinburg Police Department (the "department") received a request for the police report pertaining to a specified case. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 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."[1] 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

[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

> disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
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> > (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). The submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (defining "abuse" for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining "child" for purposes of sexual assault of a child as person under 17 years of age). We note, however, the requestor in this case is identified as a parent of the child victim named in the report, and the requestor is not accused of having committed the abuse. Therefore, the department 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 department 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 sections 552.108 and 552.130, we will consider the applicability of these exceptions to this information.

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 submitted information relates to an investigation that is still open, and release of the information you have marked would interfere with the detection, 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 the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the information you have marked under section 552.130 of the Government Code.[2]

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.[3]

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.

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[2]Section 552.130 of the Government Code permits a governmental body to redact information subject to subsections 552.130(a)(1) and 552.130(a)(3) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c)–(e).

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

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,

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 465953

Enc. Submitted documents

c: Requestor
(w/o enclosures)