



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-15908

Dear Mr. Brown:

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# 467104.

The El Paso Police Department (the "department") received a request for incident report number 12-148171. 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 encompasses section 261.201 of the Family Code, which provides as follows:

(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.

...

(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 incident report number 12-148171 was used or developed in an investigation of alleged or suspected 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 this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find incident report number 12-148171 is generally confidential under section 261.201 of the Family Code.

However, we note the requestor may be the managing conservator or other legal representative of the child victim listed in incident report number 12-148171 and is not alleged to have committed the suspected abuse at issue in that report. As such, this requestor may have a right of access to incident report number 12-148171 pursuant to section 261.201(k). *Id.* § 261.201(k). Thus, if the requestor is not the managing conservator or other legal representative of the child victim listed in incident report number 12-148171, then the department must withhold incident report number 12-148171 in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the requestor is the managing conservator or other legal representative of the child victim listed in incident report number 12-148171, then the department may not use section 261.201(a)

to withhold this report from the requestor. *Id.* In that instance, we note section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You also raise section 552.108(a)(1) of the Government Code as an exception to disclosure. Therefore, we will address the applicability of section 552.108(a)(1) to incident report number 12-148171.

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 incident report number 12-148171 pertains to a pending criminal investigation. Based upon this representation, we conclude 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). Accordingly, we conclude section 552.108(a)(1) of the Government Code is applicable to incident report number 12-148171.

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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold incident report number 12-148171 from disclosure under section 552.108(a)(1) of the Government Code. The basic information must be released to this requestor.

In summary, if the requestor is not the managing conservator or other legal representative of the child victim listed in incident report number 12-148171, then the department must withhold incident report number 12-148171 its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the managing conservator or other legal representative of the child victim listed in incident report number 12-148171, then, with the exception of basic information, the department may withhold incident report number 12-148171 from disclosure under section 552.108(a)(1) of the Government Code and release the basic information to this requestor.¹

¹We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/akg

Ref: ID# 467104

Enc. Submitted documents

c: Requestor
(w/o enclosures)