



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-16566

Dear Mr. Mann:

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# 468611 (GCA 12-0643).

The Garland Police Department (the "department") received a request for a specified police report. You state you have released some responsive information to the requestor. 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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in part, 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 Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we agree the submitted report was used or developed in an investigation by the department of alleged or suspected child abuse under chapter 261, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). However, in this instance, as the department acknowledges, the requestor is the parent of the child victim listed in the submitted report. Further, we note the requestor is not the individual alleged to have committed the suspected abuse. Thus, the department may not use subsection 261.201(a) to withhold the submitted report from this requestor. *See* Fam. Code § 261.201(k). However, subsection 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining arguments against disclosure of the submitted report.

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 information you have marked in red relates to an ongoing criminal investigation. Based on your representation and our review, we conclude release of the information you have marked in red 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) of the Government Code is generally applicable to the information you have marked in red.

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*, and includes the complainant’s identity. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the information you have marked in red includes the complainant’s identity. This information is part of the basic information and may not be withheld under section 552.108. Thus, with the exception of the basic information, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code.

Within the basic information, you seek to withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l)(3) provides that 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 section 261.201(k), the identity of the person who made the report of alleged child abuse or neglect must be redacted. Fam. Code § 261.201(l)(3). However, in this case, the reporting party is the requestor. Thus, we find to construe section 261.201(l)(3) to require a governmental body to withhold the identifying information of a reporting party from a requestor with a section 261.201(k) right of access who is herself the reporting party would lead to an absurd result that the Legislature could not have intended. *See Hernandez v. Ebrum*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Therefore, the department may not withhold the identity of the reporting party who is the requestor under section 552.101 on that ground.

In summary, with the exception of the basic information, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code. The remaining information must be released.¹

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 468611

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to the information being released, if the department receives another request for this information from an individual other than this requestor, the department must again seek a decision from this office.