



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2012

Mr. Dan T. Saluri
Senior Assistant City Attorney
City of San Angelo
106 South Chadbourne
San Angelo, Texas 76903

OR2012-16752

Dear Mr. Saluri:

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# 469245 (City File No. 12-533).

The San Angelo Police Department (the "department") received a request for incident reports pertaining to: (1) intoxication manslaughter; (2) intoxication assault; (3) driving while intoxicated with minor injuries; (4) driving while intoxicated with a child passenger; and (5) driving while intoxicated with property damage during a specified time period.¹ You state the department is releasing some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹You state, and provide supporting documentation demonstrating, the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Initially, we note you have redacted a social security number under section 552.147 of the Government Code.² We further note you have redacted license plate numbers and vehicle identification numbers from the submitted information. Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold certain categories of information, including Texas license plate numbers under section 552.130(a)(2) without the necessity of requesting an attorney general decision. *See* ORD 684. However, neither section 552.130(c) nor Open Records Decision No. 684 authorize the department to redact the vehicle identification numbers you redacted without requesting a ruling from this office. As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. However, you do not assert, nor does our review of our records indicate, that the department is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Because we are unable to discern the nature of the some of the remaining redacted information, the department has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Thus, we conclude that the department must release the information we have marked to the requestor. If you believe the marked information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. We will, however, address section 552.130 of the Government Code for the remaining redacted information, as we are able to discern the nature of this information.³

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 protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) 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

²Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

See Fam. Code § 261.201(a). Upon review, we find case number B-12-0532-SA was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of 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 disabilities of minority removed for general purposes). Thus, we find this information is subject to section 261.201(a). You have not indicated the department has adopted a rule that governs the release of the information at issue in this instance; therefore, we assume that no such regulation exists. Given that assumption, we find case number B-12-0532-SA is confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, case number B-12-0532-SA must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

⁴As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally, mutually exclusive. Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. Additionally, subsection 552.108(b)(2) is applicable to information relating to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You cite the statutory language of sections 552.108(a)(2) and (b)(2) of the Government Code and state the submitted reports in: (1) Exhibit C pertain to pending prosecutions; (2) Exhibit D pertain to pre-trial diversion; (3) Exhibit E pertain to interim disposition cases in drug court; and (4) Exhibit F did not result in a conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to the submitted reports in Exhibit F.

However, you state the reports in Exhibit C pertain to cases that are pending prosecution. You further state the reports in Exhibit D pertain to cases that are on pre-trial diversion, which you state "could potentially result in trials." Finally, you state the reports in Exhibit E pertain to cases in "drug court[.]" Accordingly, we understand that the reports in Exhibits C, D, and E pertain to cases that are still ongoing and have not concluded in a final result other than a conviction or deferred adjudication. Because you have provided this office with conflicting representations, we find you have not demonstrated the applicability of section 552.108 to Exhibits C, D, and E, and such information may not be withheld under section 552.108 of the Government Code.

As you acknowledge, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, which you state you have already released, the department may withhold the information in Exhibit F under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this

state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the motor vehicle information we have marked under section 552.130 of the Government Code.

In summary, case number B-12-0532-SA must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which you state you have already released, the department may withhold the information in Exhibit F under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle information we have marked under section 552.130 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 469245

Enc. Submitted documents

c: Requestor
(w/o enclosures)