



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2012-16886

Dear Ms. Monteros:

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# 471915 (CA-OP-12-432).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number. You state the sheriff's office has released some information. You claim some of 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 information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, as follows:

(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 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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed by the sheriff's office in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *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 the parent of the child victim, and the requestor is not accused of having committed the abuse. Accordingly, the sheriff's office may not withhold from this requestor information concerning the alleged abuse that would otherwise be confidential under section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(3) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Section 261.201(l)(2) also provides that any information excepted from disclosure under the Act or other law may be

withheld. *See id.* § 261.201(1)(2). Therefore, we will consider your claim under section 552.108 of the Government Code.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information is related to a pending criminal investigation. Based on your representation and our review, we conclude release of the submitted information would interfere with the detection, investigation, or 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). Therefore, section 552.108(a)(1) of the Government Code is applicable to the submitted information.

We note 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). 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 deemed public by *Houston Chronicle*). The sheriff’s office must generally release basic 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. You seek to withhold the identifying information of the reporting party pursuant to section 261.201(1)(3) of the Family Code. Upon review, we find the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. However, we find you have failed to demonstrate how the remaining basic information you have marked identifies the reporting party, and the sheriff’s office may not withhold this information under section 552.101 in conjunction with section 261.201(1)(3). Accordingly, with the exception of basic information, the sheriff’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code; however, when releasing basic information, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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 Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 471915

Enc. Submitted documents

c: Requestor
(w/o enclosures)