



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2012

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

OR2012-17152

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# 471210 (GCA12-0715).

The Garland Police Department (the "department") received a request for records involving two named individuals and a specified date. You claim portions of the submitted information are 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 protected by other statutes. Section 261.201 of the Family Code provides, in relevant 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 ("DFPS")] 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). The submitted information relates to an investigation of alleged or suspected child abuse conducted by the department. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 22.11(a) (defining child for purposes of indecency with a child as an individual younger than 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. As you acknowledge, the requestor is a parent of the child victim listed in the information, and the parent is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be

withheld from this requestor on the basis of section 261.201(a).¹ See Fam. Code § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(1)(3). You seek to withhold the information you have marked in blue as information that identifies an individual who made the report of abuse. We note, however, the individual whose identifying information you have marked is not a reporting party for purposes of section 261.201. Accordingly, the department may not withhold the information you have marked in pursuant to section 261.201(1)(3) of the Family Code. We note section 261.201(1)(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(1)(2). Accordingly, we will consider your argument under section 552.108 of the Government Code for the information you have marked in red.

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), 552.301(e)(1)(A); See also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to an ongoing criminal investigation being conducted by the department. Based on this representation, we conclude the 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). Therefore, 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.²

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.

¹Although you assert the requestor has a right of access to some of the submitted information under section 261.201(g) of the Family Code, we note section 261.201(g) applies to DFPS, not the department. See Fam. Code § 261.201(g) (DFPS, upon request and subject to own rules, shall provide to parent, managing conservator, or legal representative of child victim information concerning reported abuse or neglect with identity of person who made report redacted).

²We note the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. Accordingly, if the department receives another request for this information from a different requestor, the department should again seek a decision from this office. See Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 471210

Enc. Submitted documents

c: Requestor
(w/o enclosures)