



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2012

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2012-17267

Dear Ms. Pemberton:

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# 469164 (Killeen Ref. No. W008749).

The City of Killeen (the "city") received a request for the reports from two specified cases. 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 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 states:

(a) Except as provided by Section 261.203, the following information is ~~confidential, is not subject to public release under Chapter 552, Government Code, 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 in investigations of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (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). In this case, the requestor is the parent of the child victim named in the reports. Section 261.201(k) states, however, an investigating agency may not withhold from the parent of a child who is the subject of reported abuse, information concerning the reported abuse that would otherwise be confidential under section 261.201(a), unless the parent requesting the information is alleged to have committed the abuse. *See id.* § 261.201(k). We note the requestor is alleged to have committed the abuse in report number 12-010661. Thus, the requestor does not have a right of access under section 261.201(k) to the information we have marked. *See id.* Accordingly, the city must withhold report number 12-010661 in its entirety and the information we have marked in the

remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we note the requestor is not alleged to have committed the suspected abuse that is the subject of report number 12-010663. Thus, the city may not withhold the remaining information on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will address your remaining argument to withhold the remaining information in report number 12-010663 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 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 remaining information relates to a pending criminal investigation. Based on your representation and our review, 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). Thus, section 552.108(a)(1) of the Government Code is applicable to the remaining information.

Section 552.108, however, 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* and includes a detailed description of the offense and the identity of the complainant. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Section 261.201(l)(3) of the Family Code states that the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the remaining information may be withheld under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the identifying information of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the city must withhold report number 12-010661 in its entirety and the information we have marked in report number 12-010663 under section 552.101 of the

¹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the city may withhold the remaining information in report number 12-010663 under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the identifying information of the reporting party 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 469164

Enc. Submitted documents

c: Requestor
(w/o enclosures)
