



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2012

Mr. Mark D. Kennedy  
Assistant District Attorney  
Hays County  
217 Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2012-18001

Dear Mr. Kennedy:

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# 470506.

The Hays County Sheriff's Office (the "sheriff's office") received a request for case numbers C12-29343 and C12-17504. 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Fam. Code § 261.201(a). We find case number C12-17504 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). As you do not indicate that the sheriff’s office has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that case number C12-17504 is confidential under section 261.201(a). Accordingly, case number C12-17504 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation confirming, case number C12-29343 relates to a pending criminal prosecution with the Hays County District Attorney’s Office. Based on your representations and our review, we find that release of case number C12-29343 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to case number C12-29343. *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).

However, 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

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure for this information.

information). Thus, with the exception of basic information, which must be released, the sheriff's office may withhold case number C12-29343 under section 552.108(a)(1).

In summary, the sheriff's office must withhold case number C12-17504 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the sheriff's office may withhold case number C12-29343 under section 552.108(a)(1) of the Government 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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 470506

Enc. Submitted documents

c: Requestor  
(w/o enclosures)