



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

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

OR2012-18080

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# 470647 (Killeen PIR# W008876).

The Killeen Police Department (the "department") received a request for information concerning two specified reports and a specified call for service number. You state the department has released some of the information. 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.

Initially, we note some of the submitted information in report number 12-011571, which we have marked, consists of court-filed documents. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under the Act or other law. *See Gov't Code § 552.022(a)(17)*. Although you seek to withhold this information under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver)*. As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Thus, the department may not withhold the court-filed documents we have marked under section 552.108(a)(1) of the Government

Code. As the department raises no further exceptions for this information, it must be released.

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 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 [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:

...

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

Fam. Code § 261.201(a), (k), (l)(3). You state report number 12-011511 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of

“abuse” for purposes of chapter 261 of the Family Code includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person younger than 17 years of age). We note, however, the requestor in this case is identified as a parent of the child victim named in the report, and the requestor is not accused of having committed the abuse. Therefore, the department may not withhold from this requestor information concerning the alleged abuse that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the department provides information concerning this report, it must redact the identity of the person who made the report, which we have marked. *See id.* § 261.201(l)(3).

You claim the remaining information in report number 12-011571 is subject to section 552.108 of the Government Code. Section 552.108(a)(1) 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 report 12-011571 concerns a case that is still under investigation, and release of the information would interfere with the investigation. *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). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to this report.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to encompass a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state has been released, the department may withhold the remaining information in report 12-011571 under section 552.108(a)(1) of the Government Code.

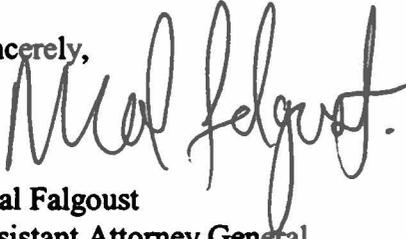
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With the exception of the information subject to section 552.022(a)(17) and basic information, the department may withhold report 12-011571 under

section 552.108(a)(1) of the Government Code. The remaining information must be released.¹

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 470647

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to some of the information being released. See Fam. Code § 261.201(k). Therefore, if the department receives another request for this same information from a different requestor, it must again seek a ruling from our office.