



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2012

Mr. William Schultz
Assistant District Attorney
Criminal District Attorney's Office
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2012-19288

Dear Mr. Schultz:

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# 473962.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for information related to a specified case involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

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 exception encompasses information made confidential by other statutes. Section 261.201 of the Family Code provides in part:

(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 [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

¹ Although you also raise sections 552.103, 552.107, and 552.111 of the Government Code, you have provided no arguments in support of the applicability of those exceptions. Therefore, this decision does not address sections 552.103, 552.107, or 552.111. See Gov't Code §§ 552.301(e)(1)(A), .302.

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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[.]

Fam. Code § 261.201(a), (k), (l)(2). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child” for purposes of offense of injury to a child under Penal Code § 22.04 as person 14 years of age or younger). Thus, the submitted information is generally confidential under section 261.201(a)(2) of the Family Code. In this instance, however, the requestor is a parent of the victim of the alleged or suspected child abuse and is not accused of committing the abuse. Therefore, pursuant to section 261.201(k) of the Family Code, the submitted information may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a)(2). *See* Fam. Code 261.201(k). Section 261.201(l)(2) provides, however, that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(l)(2). Therefore, we will consider your other arguments against disclosure.

You also claim section 552.108(a)(4) and (b)(3) of the Government Code, which provide as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court concluded a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You contend the requestor seeks access to the district attorney's office's entire prosecution file for the specified case. You assert that "[b]y making such a broad request, [the] requestor is asking for information, internal records, and notations prepared by [the district attorney's office]

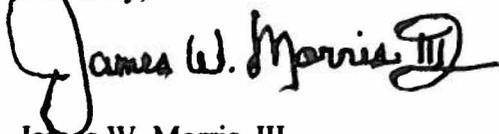
which reflect the prosecutor's mental impressions[.]” Based on your representations and our review, we conclude section 552.108(a)(4) and (b)(3) are applicable in this instance.

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 offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The district attorney's office must 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. See 531 S.W.2d at 186-188; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney's office may withhold the rest of the submitted information under section 552.108(a)(4) and (b)(3) of the Government Code and the decision in *Curry*.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.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

²As we are able to make this determination, we need not address your other arguments against disclosure. We note the requestor has a right of access to information the district attorney's office would be required to withhold from the general public. Should the district attorney's office receive another request for this same information, the district attorney's office should resubmit this information and request another decision. See Gov't Code §§ 552.301(a), .302.

Ref: ID# 473962

Enc: Submitted documents

c: Requestor
(w/o enclosures)