



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2012-19300

Dear Ms. Byles:

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# 477245 (PIR No. W021384).

The City of Fort Worth (the "city") received a request for information related to a specified case number. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. This exception encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which 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:

¹This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(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, so as to be generally confidential under section 261.201(a)(2). *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offenses of indecency with a child under Penal Code § 21.11 and sexual assault under Penal Code § 22.011); Penal Code §§ 21.11(a) (defining “child” for purposes of offense of indecency with a child), § 22.011(c) (defining “child” for purposes of offense of sexual assault). 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). *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(1)(2). Therefore, we will address the city's claim 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided an affidavit from the Tarrant County District Attorney’s Office confirming, release of the submitted information would interfere with a pending criminal prosecution. Based on your representations and the affidavit, we conclude section 552.108(a)(1) is generally applicable to the submitted information. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city 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.² The city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.³

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.

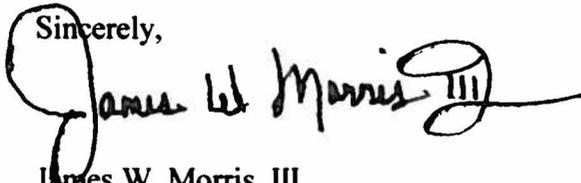
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

²We note basic information includes an arrested person’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

³We note the present requestor has a right of access to information the city would be required to withhold from a member of the general public. Should the city receive another request for this same information from a different requestor, the city should resubmit this information and request another decision. *See* Gov’t Code § 552.301(a), .302.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

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

JWM/bhf

Ref: ID# 477245

Enc: Submitted documents

c: Requestor
(w/o enclosures)