



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2013

Ms. Josette Flores
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2013-00806

Dear Ms. Flores:

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# 477049.

The El Paso Police Department (the "department") received a request for the police report pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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:

(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.

Fam. Code § 261.201(a). You contend the submitted information, which consists of report number 12292190, is confidential under section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Upon review, the submitted information pertains to a civil child custody issue and kidnapping of a child. You have not explained how this information was used or developed in an investigation under chapter 261 of the Family Code. Therefore, we conclude section 261.201 is not applicable to the submitted information; thus, the department may not withhold this information under section 552.101 on this basis.

Section 552.101 also encompasses section 48.101 of the Human Resources Code. Section 48.101(a) provides the following:

The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

Hum. Res. Code § 48.101(a). Section 48.101 makes confidential information used or developed in an investigation made under chapter 48 of the Human Resources Code. *See id.*; 25 T.A.C. § 1.207(a). Chapter 48 regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.051. For purposes of chapter 48, a disabled person means “a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s

care or protection and who is 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.” *Id.* § 48.002(a)(8). In addition, an elderly person means “a person 65 years of age or older.” *Id.* § 48.002(a)(1).

You contend the submitted information is confidential under section 48.101. As previously noted, the information pertains to a civil child custody issue and kidnapping of a child. The submitted information reflects the alleged victim is not an elderly person for purposes of chapter 48. *See id.* § 48.002(a)(1). Furthermore, you submit no arguments explaining, and the submitted information does not indicate, the alleged victim is a disabled person for the purposes of chapter 48. *See id.* § 48.002(a)(8). Accordingly, because you have not established the victim is elderly or disabled for purposes of chapter 48, we find you have failed to establish the submitted information relates to a report of abuse, neglect, or exploitation under chapter 48. *See id.* § 48.101(a). Therefore, we conclude you have not established the submitted information is confidential under section 48.101, and the department may not withhold it under section 552.101 on that ground.

Section 552.108(a) 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: (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 submitted information relates to a pending criminal investigation. Based upon your representation and our review, we conclude that release of the submitted information 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) is applicable to the submitted information.

We note, 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.³

³As our ruling is dispositive, we need not address your remaining argument under section 552.130 of the Government Code, except to note that basic information described in *Houston Chronicle* does not include information subject to section 552.130.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 477049

Enc. Submitted documents

c: Requestor
(w/o enclosures)