



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2013-00979

Dear Ms. Lindsay:

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# 481458 (Nos. 943-12 and 947-12).

The Town of Flower Mound and the Flower Mound Police Department (collectively the "town"), which you represent, received requests from two requestors for law enforcement records involving four named individuals, including information related to a specified incident number and video or audio of events or interviews on two specified dates. You claim the requested 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 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, 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:

(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 some of the information at issue is confidential under section 261.201(a). We find the submitted information related to incident numbers 12-042346 and 12-042415 was used or developed in investigations 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)(2). *See id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). As you do not indicate the town’s police department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the town must withhold the submitted information related to incident numbers 12-042346 and 12-042415 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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 the release of the submitted information related to incident number 12-048278 would interfere with a pending criminal investigation. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to that information.² *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).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the submitted information related to incident number 12-048364 pertains to a concluded case that did not result in a

¹As we are able to make this determination, we need not address your claim under section 552.108 of the Government Code for the information related to incident number 12-042415.

²As we are able to make this determination, we need not address your claim under section 552.108(b)(1) of the Government Code.

conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to that information.³

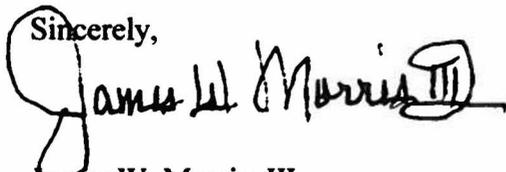
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The town must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The town may withhold the remaining information related to incident number 12-048278 under section 552.108(a)(1) of the Government Code and the remaining information related to incident number 12-048364 under section 552.108(a)(2) of the Government Code.

In summary, the town (1) must withhold the submitted information related to incident numbers 12-042346 and 12-042415 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and (2) may withhold the information related to incident number 12-048278 under section 552.108(a)(1) of the Government Code and the information related to incident number 12-048364 under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c), which must be released.

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

³As we are able to make this determination, we need not address your claim under section 552.108(b)(2) of the Government Code.

Ref: ID# 481458

Enc: Submitted documents

c: 2 Requestors
(w/o enclosures)