



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2013

Mr. Danny Daniel
Chief Deputy
County of Erath
1043 Glen Rose Highway
Stephenville, Texas 76401

OR2013-06079

Dear Mr. Daniel:

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# 484833.

The Erath County Sheriff's Department (the "department") received a request for all offense, incident, or other reports pertaining to specified crimes between January 1, 2012 to December 31, 2012. You claim that 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.

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:

(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). Upon review, we find incident report numbers 12004188, 12007182, and 12005408 pertain to investigations of alleged or suspected child abuse and are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes sexual assault and aggravated sexual assault under Penal Code sections 22.011, and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, and based on our review, we determine incident report numbers 12004188, 12007182, and 12005408 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold incident report numbers 12004188, 12007182, and 12005408 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

We address your arguments under section 552.108 for the remaining information. 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). Generally, a governmental body claiming section 552.108(a)(1) 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 claim incident report numbers 12008606, 1200493, 12004116, 12004488, 12004291, 12007061, and 12000686 relate to active criminal investigations and prosecutions. Based upon your representations and our review, we conclude that the release of the remaining incident reports 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 remaining incident reports.²

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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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). 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*). Thus with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1).

We note basic information includes an identification and description of the complainant and a detailed description of the offense. Incident numbers 12008606 and 12000493 relate to alleged sexual assaults, and the complainants are also the alleged sexual assault victims. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has concluded common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. Open Records Decision Nos. 393 at 2 (1983), 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have a legitimate interest in such information). In incident report number 12008606, the alleged sexual assault victim is identified only by a pseudonym. We find the use of a pseudonym sufficiently protects this complainant’s privacy in this case. However, a pseudonym is not used for the alleged sexual assault victim in report number 12000493. Therefore, in releasing basic information from incident report number 12000493, the department must withhold the victim’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold incident report numbers 12004188, 12007182, and 12005408 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the remaining incident reports under section 552.108(a)(1) of the Government Code. In releasing basic information from incident report number 12000493, the department must withhold the victim’s identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 484833

Enc. Submitted documents

c: Requestor
(w/o enclosures)