ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2013

Mr. Matthew B. Cross
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-06828

Dear Mr. Cross:

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# 485270.

The El Paso Police Department (the "department") received a request for information related to a specified incident. 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 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 exception encompasses information that other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201(a) 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 this chapter 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 this chapter 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.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. See id. § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of ch. 261 of Fam. Code); *see also id.* 101.003(a) (defining "child" for purposes of chapter 261 of Fam. Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), Penal Code § 22.04(c) (defining "child" for purpose of offense of injury to child as person 14 years of age or younger). Thus, the submitted information is confidential under section 261.201(a) of the Family Code.

In this instance, however, the submitted information indicates that the requestor, who is not alleged to have committed the suspected abuse or neglect, is a parent of the child victims listed in the report. *See* Fam. Code § 261.201(k). Accordingly, the department may not withhold from this requestor information concerning the alleged abuse or neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the department provides information concerning this report, the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Therefore, we will consider your remaining argument against disclosure of the submitted information.

Section 552.108 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 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 and/or prosecution. Based upon your representation and our review, we find the department has demonstrated 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).

However, 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). Basic front-page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing 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.[1]

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 485270

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]We note the requestor has a special right of access to the basic information being released in this instance. *See* Fam. Code § 261.201 (k). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.