



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2013-09141

Dear Mr. McKechnie:

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# 493549 (City ID# 240).

The City of Wichita Falls (the "city") received a request for two specified incident reports. 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 section encompasses information made confidential by other statutes, such as section 261.201(a) 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 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.

Fam. Code § 261.201(a). You state the submitted incident reports were used or developed in investigations of alleged child abuse. *See id.* § 261.001(1)(A) (defining “abuse” for purposes of Fam. Code ch.261). Upon review, we find incident report number 13-041208 falls within the scope of section 261.201 of the Family Code. You have not indicated the city has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold incident report number 13-041208 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). We find, however, incident report number 13-050365 does not fall within the scope of section 261.201 of the Family Code. We therefore conclude the city may not withhold incident report number 13-050365 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also claim incident report number 13-050365 is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 state incident report number 13-050365 relates to a pending criminal investigation. Based upon your representation and our review, we conclude that the release of incident report number 13-050365 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 incident report number 13-050365.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* 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 city may

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

withhold incident report number 13-050365 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold incident report number 13-041208 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the city may withhold incident report number 13-050365 under section 552.108(a)(1) of the Government Code.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 493549

Enc. Submitted documents

c: Requestor
(w/o enclosures)