



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2013

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2013-17777

Dear Ms. Benton:

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# 502821 (Waco Reference # LGL-13-549).

The City of Waco (the "city") received a request for a specified incident report. You claim 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. Section 552.101 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 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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of Family Code includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of section 22.011 as “a person younger than 17 years of age”). Upon review, we find the submitted information is within the scope of section 261.201(a). Therefore, we conclude the submitted information is generally confidential under section 261.201(a). However, the requestor is a representative of a foster agency and may represent the child victim at issue. Additionally, the requestor is not alleged to have committed the alleged or suspected child abuse or neglect. Section 261.201(k) provides a “parent, managing conservator, or other legal representative” of the child has a right of access to information otherwise confidential under section 261.201(a). We understand foster children are generally under the conservatorship of the state and parties such as foster parents and foster agencies may have legal responsibilities toward such

children. We are unable to determine whether the requestor is a legal representative or managing conservator of the child victim for the purposes of section 261.201(k). Accordingly, we must rule conditionally. If the requestor is not a legal representative or managing conservator of the child victim at issue, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is a legal representative or managing conservator of the child victim, then the city may not use section 261.201(a) to withhold the information at issue from this requestor. *See* Fam. Code § 261.201(k). Section 261.201(l)(2) provides information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(l)(2). Therefore, in the event the requestor is a managing conservator or other legal representative of the child victim, we address your arguments to withhold the submitted information under section 552.108 of the Government Code.

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 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 the submitted information pertains to a an open and pending criminal case. Based on your representation, we agree 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, we find 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 a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the complainant’s identity. 531 S.W.2d at 186–87. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, basic information reveals the identity of the reporting party. Section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, if the requestor is not a managing conservator or other legal representative of the child victim at issue in the submitted information, then the city must withhold the

submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a managing conservator or other legal representative of the child victim, then with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/ag

Ref: ID# 502821

Enc. Submitted documents

c: Requestor
(w/o enclosures)