



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2013

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 S. Closner Blvd.
Edinburg, Texas 78539

OR2013-17839

Dear Mr. Hernandez:

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# 502510 (Ref. ID# 54016).

The Edinburg Police Department (the "department") received a request for a specified police report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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 Chapter 552, Government Code, 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;

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, the submitted information is subject to section 261.201 of the Family Code. We note, however, the requestor is the parent of the child victim named in the submitted information and is not alleged to have committed the suspected abuse. Therefore, the submitted information may not be withheld from the requestor under section 261.201(a). *See* Fam. Code § 261.201(k). We note section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Additionally, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(l)(2). Accordingly, we will address your remaining arguments for the submitted 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). A governmental body

claiming section 552.108 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 information you have marked relates to a pending criminal prosecution with the Hidalgo County District Attorney's Office. Based on your representation and our review, we conclude the release of the information at issue 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 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 information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 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 considered to be basic information). We note you have marked the entire narrative portion of the responsive report for withholding. The remaining information in the responsive report does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Accordingly, the department must release sufficient portions of the responsive report to encompass basic information as described by *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* ORD 127. Thus, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You seek to withhold the identifying information of the reporting party in the basic information and the remaining information under to section 261.201(1)(3) of the Family Code. As noted above, section 261.201(1)(3) states the identity of the reporting party must be withheld when releasing information concerning the reported abuse. Fam. Code § 261.201(1)(3). Upon review, we find the department must withhold the information we have marked in the basic information and the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. However, we find you have failed to demonstrate how the remaining information you have marked identifies the reporting party, and the department may not withhold this information under section 552.101 in conjunction with section 261.201(1)(3).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the department may

withhold the social security number you have marked under section 552.147 of the Government Code.¹

In summary, with the exception of basic information, which must include a sufficient portion of the narrative, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the basic information and the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The department must withhold the driver's license information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The department may withhold the social security number you have marked under section 552.147 of the Government Code. The department must release the remaining information.²

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

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¹We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

²Because the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 502510

Enc. Submitted documents

c: Requestor
(w/o enclosures)