



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Ms. Meredith Riede
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2013-17940

Dear Ms. Riede:

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# 503361.

The City of Sugar Land (the "city") received a request for police reports for two specified addresses and a named individual for a specified time period. 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.

Initially, you state report 13-463 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-11852 (2013). In Open Records Letter No. 2013-11852, this office determined, with the exception of the basic information, the city may withhold report 13-463 under section 552.108(a)(1) of the Government Code. However, in that ruling we found the requestor, who was a parent of the child victim and not the suspect, had a special right of access to the basic information being released under section 261.201(k) of the Family Code. The current request involves a different requestor with no special right of access to the information that was released in the previous ruling. Thus, we find the circumstances have changed, and, as you acknowledge, the city may not rely on Open Records Letter No. 2013-11852 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against disclosure of report 13-463, as well as your arguments against disclosure of report 12-8164, which was not at issue in the previous ruling.

Section 552.101 of the Government Code exempts 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.

...

(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). You contend reports 12-8164 and 13-463 are subject to section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Upon

review, we find report 13-463 is an investigation of alleged or suspected child abuse and is subject to section 261.201. Although the requestor is a parent of the child victim, the requestor is the individual alleged to have committed the alleged or suspected abuse. Thus, the requestor does not have a right of access to report 13-463 information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the city must withhold the report 13-463 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

However, we find you have failed to demonstrate how report 12-8164 is a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or how this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the city may not withhold report 12-8164 under section 552.101 on this basis.

Section 552.108(a) 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: (1) 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 report 12-8164 pertains to a criminal case that is pending investigation. Based upon your representation and our review, we conclude release of report 12-8164 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 report 12-8164.

We note, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, the city may withhold report 12-8164 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the report 13-463 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, which must be released, the city may withhold report 12-8164 under section 552.108(a)(1) of the Government Code.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of report 13-463.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 503361

Enc. Submitted documents

c: Requestor
(w/o enclosures)