



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2014

Mr. Michael C. Hayes
City Attorney
City of Kerrville
701 Main Street
Kerrville, Texas 78028

OR2014-10503

Dear Mr. Hayes:

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# 526282.

The Kerrville Police Department (the "department") received a request for "any and all records" regarding two named individuals. You state some responsive information has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, we find the information we have marked 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 Family Code chapter 261); *see also id.* §101.003(a) (defining “child” for purposes of section 261.201). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. You have not indicated the department 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 department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (addressing predecessor statute).

We understand you to assert the remaining information, incident report number 0600004560, is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the

governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You indicate report number 0600004560 pertains to an inactive criminal case which has not resulted in a conviction or adjudication. We note this information pertains to an incident of burglary of a habitation. Pursuant to section 30.02(c)(2) of the Penal Code, burglary is a felony if committed in a habitation. *See* Penal Code § 30.02(c)(2). Under article 12.01(4)(B) of the Code of Criminal Procedure, the statute of limitations for prosecution of burglary of a habitation is five years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.01(4)(B). In this instance, the offense allegedly occurred in March 2006. You state the department received the request for information on April 1, 2014. Thus, based on your representations and our review, we find prosecution of this offense is barred by the statute of limitations. Accordingly, we conclude you have not demonstrated the release of the information at issue would interfere with the detection, investigation or prosecution of crime. *See* Gov't Code § 552.108(a)(1), (b)(1); *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). Therefore, the department may not withhold incident report number 0600004560 under section 552.108 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127.

Upon review, we find the information we have marked in incident report number 0600004560 consists of confidential CHRI. Accordingly, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.130(a)(1) 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. *See* Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the department must withhold the information we have marked (1) under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, (2) under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, and (3) under section 552.130(a)(1) 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 526282

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information to be released contains a social security number. 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 under the Act. Gov't Code § 552.147(b).