



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2014

Ms. Susan Camp-Lee
Counsel for the City of Round Rock
Sheets & Crossfield, P.C.
309 Main Street
Round Rock, Texas 78664-5246

OR2014-17148

Dear Ms. Camp-Lee:

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# 537385.

The Round Rock Police Department (the "department") received a request for two specified offense reports. You state the department will release some information 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. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, we find report number 13-0606-0026 was used or developed in an investigation of alleged child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Thus, this report is confidential under section 261.201(a) of the Family Code, and the department must generally withhold it under section 552.101 of the Government Code.² However, we note section 261.201(a) of the Family Code provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

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). Generally, 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). Your state report number 13-1121-0024 pertains to a pending criminal investigation. Based upon this representation, we conclude release of this 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, section 552.108(a)(1) of the Government Code is applicable to the information at issue.

However, as you acknowledge, 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*. 531 S.W.2d at 186-87. Thus, with the exception of basic information, which you state you have released, the department may generally withhold report number 13-1121-0024 under section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not release your remaining argument against disclosure of this information.

However, we note the requestor is an investigator with the Texas Board of Nursing (the "board"). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety (the "DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov't Code § 411.125. In addition, section 411.087(a) of the Government Code provides in pertinent part,

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

- (2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, if the arrestee meets any of the criteria of section 411.125, then the requestor is authorized to receive CHRI pertaining to the arrestee.

We note both of the submitted reports contain CHRI. However, the requestor does not indicate, and we are not otherwise able to determine, whether the arrestee in these cases meets any of the criteria of section 411.125 of the Government Code. Additionally, as indicated above, with respect to report number 13-0606-0026, information subject to chapter 261 of the Family Code may be released only for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). We are also unable to determine if the requestor intends to use CHRI in report number 13-0606-0026 for purposes consistent with the Family Code. Accordingly, we must rule conditionally with respect to each report.

With respect to report number 13-0606-0026, if the department determines release of the CHRI is consistent with the purposes of the Family Code and the arrestee meets the criteria of section 411.125, then, pursuant to section 411.087(a)(2) of the Government Code, the board is authorized to obtain the arrestee's CHRI in the report. *See id.* §§ 411.087(a)(2), .125. Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, in that instance, the department must release CHRI pertaining to the arrestee and must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines that release is not consistent with the purposes of the Family Code or the arrestee does not meet the criteria of section 411.125 of the Government Code, then the board does not have a right of access to the arrestee's CHRI, and the department must withhold report number 13-0606-0026 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

With respect to report number 13-1121-0024, if the arrestee meets any of the criteria of section 411.125 of the Government Code, then, pursuant to section 411.087(a)(2) of the Government Code, the board is authorized to obtain the arrestee's CHRI in the report. *See Gov't Code* §§ 411.087(a)(2), .125. In that instance, the department must release the CHRI pertaining to the arrestee. As indicated above, although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* ORDs 613 at 4, 451. Thus, with the exception of basic information and CHRI pertaining to the arrestee, the department may withhold report number 13-1121-0024 pursuant to section 552.108(a)(1) of the Government Code. However, if the arrestee does not meet any of the criteria of section 411.125, then the board does not have a special right of access to the arrestee's CHRI under section 411.087. In that instance, with the exception of basic information, the department may withhold report number 13-1121-0024 under section 552.108(a)(1) of the Government Code.

In summary, the department must generally withhold report number 13-0606-0026 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Further, with the exception of basic information, which you state you have released, the department may generally withhold report number 13-1121-0024 under 552.108(a)(1) of the Government Code. If the arrestee meets any of the criteria of section 411.125 of the Government Code, then the department must release CHRI pertaining to the arrestee from each report pursuant to section 411.087(a)(2) of the Government Code; however, the department may release CHRI from report number 13-0606-0026 only if such release is consistent with the purposes 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 537385

Enc. Submitted documents

c: Requestor
(w/o enclosures)