



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2016

Ms. Lori Baughman and Ms. Karon Newby-Cooley
Records Clerks
City of Pflugerville
P.O. Box 679
Pflugerville, Texas 78691

OR2016-23843

Dear Ms. Baughman and Ms. Newby-Cooley:

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# 631442 (ORR# W004747-081216 and W004717-080416).

The Pflugerville Police Department (the "department") received three requests from two requestors for any police reports and 911 calls regarding a named individual on two specified dates. You state you have released some information to the requestors. 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 of the Government Code encompasses section 261.201 of the Family Code, which states in relevant part:

(a) Except as provided by Section 261.203, the 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 Juvenile Justice Department, 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[.]

Fam. Code § 261.201(a), (k), (l)(2). We note report number 16080058 was used in an investigation of alleged child abuse or neglect conducted by the department under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (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). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, we find report number 16080058 is subject to chapter 261 of the Family Code. We note the first requestor is the child victim’s mother and is alleged to have committed the suspected abuse or neglect. Thus, this requestor does not have a right of access to report number 16080058 under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold report number 16080058 in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with

section 261.201(k) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note the second requestor is the father of the child victim and is not alleged to have committed the abuse or neglect. Thus, the department may not use section 261.201(a) to withhold report number 16080058 from this requestor. *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your remaining argument under section 552.108 of the Government Code for report numbers 16080058 and 16080045.

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: (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(a)(1) must 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 relates to a pending criminal investigation or prosecution. Based upon this representation, we conclude the 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, section 552.108(a)(1) of the Government Code is applicable to the submitted information.

However, we note 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 types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold report number 16080045 from the first requestor and report numbers 16080045 and 16080058 from the second requestor under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold report number 16080058 in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department may, with the exception of basic information, withhold report number 16080045 from the first requestor under section 552.108(a)(1) of the Government Code. The department may, with the exception of basic information, withhold both reports from the second requestor under section 552.108(a)(1) of the Government Code. The department must release the basic

information in report number 16080045 to the first requestor and the basic information in both reports to the second requestor.¹

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 631442

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note both requestors have a special right of access to some of the information being released in this instance. See Fam. Code §§ 58.007(e), 261.201(k). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.