



October 4, 1999

Mr. Miles K. Risley
City of Victoria
Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR99-2805

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129011.

The City of Victoria (the "city") received a request for all documents, reports, indictments, and complaints regarding two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code, and section 261.201 of the Family 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." Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 261.201(a). The relevant language of that statute reads as follows:

(a) 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, 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). One of the submitted documents at issue is police report number 9812927. Because this report relates to an allegation of child abuse, the information is within the scope of section 261.201 of the Family Code. The information is, therefore, confidential pursuant to section 261.201 of the Family Code as encompassed by section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold this report from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

As explained above, section 552.101 also encompasses common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, because the requestor asks for all the arrest records of two named individuals, we believe that these individuals' privacy rights have been implicated. Thus, to the extent that the city has records in which the named individuals are possible suspects, the city must withhold this information under section 552.101. *See id.* We have marked the information you must withhold.

We believe that the remainder of the submitted information falls under section 552.108(a)(1) of the Government Code.² Section 552.108(a)(1) 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." You state that the submitted records relate to several ongoing criminal cases. Based upon this representation, we conclude that the release of the records 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the remaining records are excepted from disclosure pursuant to section 552.108(a)(1).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*

¹We note, however, that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(f).

²Because you argue that the submitted documents are excepted under "Section 552.108 of the Act (law enforcement exception)" and because you state that the documents pertain to matters currently under investigation by the Victoria Police Department, we assume that you mean to raise section 552.108(a)(1) of the Government Code. However, we caution you that failure to make clear to this office exactly which statutory exception or exceptions you wish to raise may result in an Attorney General ruling requiring the release of records which might otherwise fall under an exception to disclosure.

Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the submitted incident reports. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 129011

Encl: Marked documents

cc: Ms. Sonja M. Miori
304 Garcitas Grove
Inez, Texas 77968
(w/o enclosures)