ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-07760A

Dear Ms. Aguilar:

This office issued Open Records Letter No. 2009-07760 (2009) on June 8, 2009. Subsequent to that ruling, you informed this office that your original briefing contained a typographical error which resulted in a portion of the submitted information being withheld under the wrong exception to disclosure. You have now submitted the correct brief and ask this office to issue a corrected ruling in light of this clarification. We have considered your request and this decision serves as the correct ruling and is a substitute for the decision issued on June 8, 2009. *See generally id.* § 552.011 (providing that Office of the Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 352964.

The City of Corpus Christi and the Corpus Christi Police Department (collectively the "city") received thirteen requests for information pertaining to a specified incident.[1] You inform us

[1]We note that the city sought and received clarification regarding one of the requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

the city has no information responsive to some of the requests.[2] You claim that 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. We have also considered comments received from one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses statutory confidentiality provisions. You contend that some of the submitted information is confidential under section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in pertinent part as follows:

> (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:
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> > (1) a report of abuse, neglect, or exploitation made under this chapter;
> >
> > (2) the identity of the person making the report; and
> >
> > (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.
>
> (b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services and certain other state agencies, depending on the circumstances surrounding the

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[2]We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

incident.[3] *See id.* §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101. The submitted information relates to the city police department's investigation into allegations of abuse at the Corpus Christi State School. However, you have provided an affidavit from a representative of the Adult Protective Services Division of the Department of Family and Protective Services (the "division"), stating the division is conducting an investigation under chapter 48 of the Human Resources Code and is using the city's information as part of its investigation. Because the Legislature expressly made all information used by the division in its Chapter 48 investigation confidential, we agree that the a portion of the submitted information, which we have marked, is confidential under section 48.101. *See id.* § 48.101(a)(3). Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See* Hum. Res. Code § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude that the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.[4]

We note that one of requestors asserts that the city has waived its claim under section 552.101 in regards to the information at issue that was shown in open court in connection with a bond reduction hearing and has been made publicly available on a Corpus Christi television station's website. The requestor relies upon the holding in *Patmore v. State*, 831 S.W.2d 97 (Tex. App.—Eastland 1992, no pet.), where the court found waiver of former section 34.08 of the Family Code,[5] a confidentiality provision similar to section 48.101 of the Human Resources Code, because a video that was used in an investigation of child abuse was disclosed to persons other than those privileged to view it and used in a parole revocation hearing. *Id.* at 98. We acknowledge for purposes of a court proceeding, the city may have waived the protection of section 48.101 of the Human Resources Code because of its disclosure in open court. However, Government Code section 552.352(a) provides that "[a] person commits an offense if the person distributes information considered confidential under the terms of this chapter." *See* Gov't Code § 552.352. Furthermore, although this office has found that a governmental body has waived a privilege in the context of the Act, it has done so only in situations in which the privilege protects just the interests of a governmental body. *See* Open Records Decision Nos. 630 (1994) at 4 (waiver of attorney-client privilege as incorporated in section 552.107(1) of

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[3]In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

[4]Because we are able to make a determination under section 48.101, we need not address your additional arguments against the disclosure of these records.

[5]Section 34.08 of the Family Code is the predecessor statute to section 261.201 of the Family Code.

Act); 549 (1990) (waiver of informer's privilege). We do not believe section 48.101 protects just the interests of the governmental body; it also protects the individuals who report abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. *See* Hum. Res. Code § 48.101(a)(2). We do not believe the Act permits a governmental body to waive section 552.101 when it operates in conjunction with a statute that protects more than the interests of a governmental body. Thus, regardless of whether the city previously released any of the information at issue, we find it is confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

You assert that a portion of the remaining information is excepted under section 552.108 of the Government Code. 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] release of the information would interfere with the detection, investigation, or prosecution of crime." 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to a pending criminal investigation. Based on this representation, we conclude that the 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*. Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the remaining information under section 552.108(a)(1).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Paige Savoie

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 343985

Enc. Submitted documents

cc: 12 Requestors
(w/o enclosures)