



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2009

Mr. J. David Dodd, III
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Attorneys & Counselors at Law
1800 Lincoln Plaza
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Dallas, Texas 75201

OR2009-08215

Dear Mr. Dodd:

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# 346002.

The Allen Police Department (the "department"), which you represent, received a request for (1) information relating to the personnel records of a named police officer; and (2) all incident and arrest reports written or sponsored by the named officer thirty days prior to July 27, 2008 and thirty days following the arrest in a specified case. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested personnel records. To the extent such information exists, we presume you have released it. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

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

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides 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, 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)(1), (2). Upon review, we find that report number 08038509 was used or developed in an investigation of alleged child neglect. *See id.* § 261.001(1), (4) (defining “neglect” for purposes of Fam. Code ch. 261); § 101.003(a) (defining “child” for purposes of section 261.201 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, we find that the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that report number 08038509 is confidential under section 261.201 of the Family Code in conjunction with section 552.101 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.” *Id.* § 552.108(a)(1). 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the submitted information would interfere with the further investigation and prosecution of the crime. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to the remaining incident and arrest reports. *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. *See Gov’t Code* § 552.108(c). Basic information refers

to the information held to be public in *Houston Chronicle*. Thus, with the exception of basic front-page offense and arrest information, the department may withhold the remaining incident and arrest reports under section 552.108(a)(1).²

In summary, the department must withhold report number 08038509 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the remaining information under section 552.108 of the Government Code.³

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

²As our ruling is dispositive, we do not address your other arguments against disclosure, except to note that, generally, basic information held to be public in *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), is not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

³We note that the basic information contains the arrestees' social security numbers. 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

Ref: ID# 346002

Enc. Submitted documents

c: Requestor
(w/o enclosures)