



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-13105

Dear Ms. Sandoval-Walker:

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# 355608.

The El Paso Police Department (the "department") received a request for all records regarding a named individual, including four specified arrests. You state the department has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that report No. 00-265043 is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

(a) [T]he 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.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, amended by Act of June 1, 2009, 81st Leg., R.S., ch. 779, §1, 2009 Tex. Sess. Law Serv. 1965, 1965-66 (Vernon) (to be codified as an amendment to Fam. Code § 261.201). You state, and we agree, that report No. 00-265043 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. You do not inform us whether the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given this assumption, we conclude the department must withhold report No. 00-265043 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find a portion of the submitted information constitutes CHRI. We have marked the information that the department must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

Next, we address your argument under section 552.108 of the Government Code for report No. 08-351155. Section 552.108(a) 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). 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). You state report No. 08-351155 relates to a pending criminal investigation and prosecution. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to report No. 08-351155. *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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, the department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the department may withhold report No. 08-351155 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). You have marked Texas driver’s license numbers, a vehicle identification number, and a license plate number pursuant to this section. We note that some of the information you have marked belongs to the requestor’s client. In this instance, the requestor has a right of access to her client’s information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department may not withhold the requestor’s client’s information under section 552.130. The department must withhold the remaining information we have marked under section 552.130 of the Government Code.

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. Gov’t Code § 552.147(b). However, this exception protects personal privacy; therefore, the requestor has a right of access to her client’s social security number. *See id.* § 552.023. Accordingly, the department may withhold only social security numbers that belong to living persons other than the requestor’s client under section 552.147(b) of the Government Code.

In summary, the department must withhold report No. 00-265043 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must also withhold the information we have marked pursuant to section 552.101

in conjunction with section 411.083 of the Government Code. With the exception of basic information, the department may withhold report No. 08-351155 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department may withhold only social security numbers that belong to living persons other than the requestor's client under section 552.147(b) of the Government Code. The remaining information must be released.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.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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 355608

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.