



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. Robert E. Reyna & Mr. Charles H. Weir
Assistant City Attorneys
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-14156

Dear Mr. Reyna and Mr. Weir:

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# 357545 (San Antonio File Nos. ORR 2009-3926 & ORR 2009-4223).

The San Antonio Police Department (the "department") received two requests. The first request seeks offense report numbers 90484986 and 90541591. The second request seeks offense report number 90484986. You claim the submitted offense reports are 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 reports.

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. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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 . . . 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[.]

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(a)), and Act of June 3, 2009, 81st Leg., R.S., ch. 1377, § 13, 2009 Tex. Sess. Law Serv. 4324, 4327–28 (Vernon) (to be codified at Fam. Code § 261.201(k), (l)). You assert the submitted reports involve the alleged abuse or neglect of a child. Upon review, report number 90541591 is not a report or an investigation of child abuse or neglect. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Although we agree report number 90484986 was used or developed in an investigation of an allegation of child abuse, the requestor in this instance is a parent of the child victim listed in the report, and is not alleged to have committed the alleged abuse. Consequently, the department may not use section 261.201(a) to withhold this report from this requestor.¹ *Id.*

¹Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

§ 261.201(k). Section 261.201(1)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, because you also assert section 552.108(a)(1) for the submitted reports, we will address your argument under this section for both reports.

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.” Gov’t Code § 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office that report numbers 90541591 and 90484986 are part of an open investigation by the department, and that their release would interfere with the detection, investigation, or prosecution of crime. Based on your representations and our review, we determine release of most of the information in these reports 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).

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*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report numbers 90484986 and 90541591 under section 552.108(a)(1).²

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

²The basic information being released from report number 90484986 includes confidential information to which the requestor has a right of access under section 552.023 of the Government Code as the parent of the minor child. *See* 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).

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized, cursive flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 357545

Enc. Submitted documents

cc: Requestor
(w/o enclosures)