



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2009

Mr. Robert Massey  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-17981

Dear Mr. Massey:

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# 365572 (City ID# 272).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified incident. 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.

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides in pertinent 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, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information was used or developed in an investigation by the department of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code); Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Accordingly, we find that the submitted information is within the scope of section 261.201 of the Family Code. You do not indicate that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

In this instance, however, the requestor may be the mother of the child victim listed in the information. Further, the requestor is not the individual alleged to have committed the suspected abuse. As it is not clear whether the requestor is the child’s parent for purposes

of section 261.201(k), we must rule conditionally. If the requestor is not a parent of the child victim listed in the report, then the submitted information is confidential in its entirety under section 261.201 of the Family Code and must be withheld on that basis under section 552.101 of the Government Code.<sup>1</sup>

If the requestor is a parent of the child victim, then the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(l)(3). Additionally, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also assert section 552.108 of the Government Code for the submitted information, we will address your argument under this section.

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." 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 state that the submitted 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. 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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*). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1). In releasing the basic information, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(l)(3).

In summary, if the requestor is not a parent of the child, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction

---

<sup>1</sup>As our ruling is dispositive under this scenario, we need not address your remaining argument against the disclosure of the submitted information if the requestor is not a parent of the child victim.

with section 261.201 of the Family Code. If the requestor is a parent of the child, then with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 365572

Enc. Submitted documents

c: Requestor  
(w/o enclosures)