



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2010

Mr. Charles Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-04391

Dear 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# 374028 (COSA File No. 2010-4996).

The City of San Antonio (the "city") received a request for a specified offense report. You claim the submitted report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in part as follows:

(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:

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<sup>1</sup>The 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).

(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 [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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;  
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). Our review of incident report number 90881179 shows it was used or developed in an investigation of child abuse under chapter 261. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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 the submitted report is generally confidential under section 261.201 of the Family Code. However, the requestor is the parent of the child victim listed in the report and is not alleged to have committed the suspected abuse. Therefore, in this instance, the submitted report may not be withheld from this requestor on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). As you raise section 552.108 of the Government Code for the submitted report, we will consider your argument under this exception.

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 state that incident report number 90881178 relates to an open criminal investigation. Based on this representation and our review, we conclude that release of this report 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. 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). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identification and description of the complainant. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the complainant is also the reporting party for purposes of section 261.201 of the Family Code. Section 261.201(1)(3) of the Family Code states the reporting party’s identity must be redacted. *See* Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the city 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.<sup>2</sup>

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<sup>2</sup>We note that because the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 374028

Enc. Submitted documents

c: Requestor  
(w/o enclosures)