



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028-2215

OR2010-05752

Dear Ms. Stebbins:

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# 376705.

The Kerrville Police Department (the "department") received a request for information pertaining to named individuals. 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.¹

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

¹We note you have redacted Texas driver's license numbers under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The requestor, however, has a right of access to her own driver's license number under section 552.023 of the Government Code and it may not be withheld from her under section 552.130 and pursuant to Open Records Decision No. 684. *See* Gov't Code § 552.023(b). (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision Nos. 684 at 12, 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We also note you have redacted social security numbers under section 552.147 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.

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code.² Section 261.201 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.

Fam. Code § 261.201(a). Upon review of the information at issue, we find it pertains to an investigation of an assault between two adults. Although there was a child present and Child Protective Services (“CPS”) was notified, the department has not explained that the information at issue was actually used by CPS in an investigation conducted under chapter 261. We therefore conclude section 261.201 is not applicable to the investigation at issue, and the department may not withhold any portion of the submitted information under section 552.101 on such basis.

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 the submitted information pertains to a pending criminal investigation. Based on this representation and our review, we conclude 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).

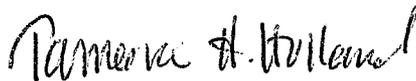
²Although you raise section 34.08 of the Family Code, we note section 34.08 is the predecessor statute to section 261.201 of the Family Code.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

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 H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 376705

Enc. Submitted documents

c: Requestor
(w/o enclosures)