



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-01591

Dear Mr. 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# 407690 (Montgomery County ORR# 2010-4744).

The Montgomery County Sheriff's Department (the "sheriff") received a request for all records relating to a specified case number. You claim that the submitted information 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. 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:

¹The Office of the Attorney General will raise a mandatory exception 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 [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). We note the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code. However, we note the requestor is a parent of the child victim listed in the report. Further, this individual is not alleged to have committed the suspected abuse. Therefore, the sheriff may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however,

states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Further, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, because you assert section 552.108(a)(1) for the submitted information, we will address your argument under this section.

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 relates to an active criminal investigation and that release of the submitted information would interfere with the ongoing investigation. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Thus, we agree section 552.108(a)(1) is applicable to the submitted information.

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). Such basic, front-page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* 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 sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. In this instance, the information that must be released as basic information identifies the reporting party for purposes of section 261.201 of the Family Code. Therefore, in releasing basic information, the sheriff must withhold the reporting party’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the sheriff must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.²

²We note the basic information being released consists of confidential information to which the requestor has a right of access. *See* Fam. Code § 261.201(k). Therefore, if the sheriff receives another request for this same information from a different requestor, the sheriff should again seek a decision from this office. *See* Gov’t Code §§ 552.301(a), .302.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 407690

Enc. Submitted documents

c: Requestor
(w/o enclosures)