



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2011-04102

Dear Ms. Gravley:

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# 414914.

The Euless Police Department (the "department"), which you represent, received a request for two specified reports. You claim 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 submitted information, we find it pertains to an investigation of a domestic disturbance between two adults. Although there was a child present and Child Protective Services ("CPS") was notified, you have not explained that the information at issue was actually used by CPS or the department in an investigation conducted under chapter 261. Consequently, we find you have failed to adequately demonstrate how this information constitutes a report of alleged or suspected child abuse or neglect or that it was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). 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 that basis.

We note the submitted information includes documents filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold these court-filed documents under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the court-filed documents may not be withheld under section 552.108 and must be released.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the remaining information would interfere with a pending criminal prosecution. Based on your representations, we conclude section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tf

Ref: ID# 414914

Enc. Submitted documents

c: Requestor
(w/o enclosures)