



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2011

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-07479

Dear Ms. Sandoval 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# 418767.

The El Paso Police Department (the "department") received a request for all records of reports during a specified period involving three named individuals, including the name and contact information for the officers who responded to a specified incident. You state the department has released some of the information. You claim a portion of 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.

Initially, we note some of the information you have submitted is not responsive to the request. The requestor seeks records during a specified period, and some of the information you have submitted falls outside that period. Thus, the information outside the period specified is not responsive. This ruling does not address the public availability of non-responsive information, and the department need not release information that is not responsive to the request.

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

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).

Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which states:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department 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 Chapter 552, Government Code, 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 report 11-026208 was used or developed in an investigation of alleged child neglect. *See id.* § 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note, however, the requestor in this case represents a parent of one of the child victims listed in the report, and that parent is not accused of having committed the neglect. Accordingly, the department may not withhold from this requestor information concerning the alleged neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, before the department provides information concerning this report, it must redact any personally identifying information about the other child victims named in the report, which we have marked. *See id.* § 261.201(l)(1). The department also must redact the identity of the person who made the report, which we have marked. *See id.* § 261.201(l)(3).

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 report 11-056058 relates to a pending investigation or prosecution and release of the information could interfere with the detection, investigation, and 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) (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). Thus, we find section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the identification and description of the complainant, a detailed description of the offense, and the names of the arresting and investigating officers. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report 11-056058 under section 552.108(a)(1) of the Government Code.

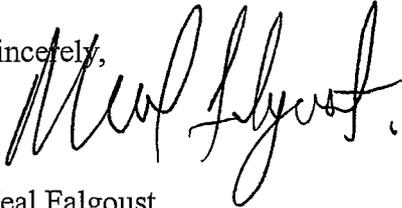
In summary, the department must withhold the information we have marked in report 11-026208 under section 552.101 of the Government Code in conjunction with

section 261.201 of the Family Code. The remaining information in this report must be released to this requestor.² With the exception of basic information, the department may withhold report 11-056058 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 418767

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor in this instance has a special right of access to the information being released in report 11-026208. *See* Fam. Code § 261.201(k). Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.