



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Ms. Janis K. Hampton
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000

OR2011-19035

Dear Ms. Hampton:

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# 440757.

The City of Bryan (the "city") received a request for a specified offense report. 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 information you have submitted.

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

...

(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)(2)-(3). Upon review, we find the submitted information consists of a report used or developed in the city's police department's investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining "abuse" for the purposes of chapter 261 of the Family Code as including offense of indecency with a child under Penal Code section 21.11); Penal Code § 21.11(a) (defining "child" for purposes of Penal Code section 21.11 as person under 17 years of age). Accordingly, we determine the submitted report is within the scope of section 261.201 of the Family Code. However, it appears the requestor may be the parent of the child victim listed in the report and is not alleged to have committed the alleged or suspected abuse. If the requestor is not the parent of the child victim listed in the report, the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of the child victim listed in the report, the submitted report may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, we note section 261.201(l) provides before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any

information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). You assert the submitted report is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we address this argument for the report.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You explain the submitted report relates to a closed investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted report.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As noted above, the identity of the party who made the report must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the city may withhold the submitted report under section 552.108(a)(2) 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.

In summary, if the requestor is not the parent of the child victim listed in the report, the report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of the child victim listed in the report, then with the exception of basic information, the city may withhold the report under section 552.108(a)(2). In releasing basic information, the city must withhold the identity of the reporting party pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 440757

Enc. Submitted documents

c: Requestor
(w/o enclosures)