



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-09288

Dear Mr. Brown:

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# 456361.

The El Paso Police Department (the "department") received a request for all 9-1-1 call and dispatch records for a specified address for a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert the submitted information must be withheld because the request for information was not properly filled out. We disagree. A governmental body may require that a request for information be in writing because the governmental body's duty to request a ruling from our office arises only on receipt of a written request for information. *See* Gov't Code § 552.301(a). However, any written communication that reasonably can be judged to be a request for public information is a request for information for purposes of the Act. *See* Open Records Decision No. 44 at 2 (1974). The Act requires "no particular request form or 'magic words' [.]" Open Records Decision No. 483 at 2 (1987); *see* Open Records Decision No. 497 at 3 (1988). In this instance, the requestor used the department's request form to submit his request and listed his name, mailing address, telephone number, and the specific information he seeks. Thus, we find the written communication provided to the department by the requestor can reasonably be judged as a request for public information for purposes of the Act. Accordingly, the department may not withhold any of the submitted information on the basis that the request for information was not properly filled out.

Next, we note some of the submitted information, which we have marked, is not responsive to the request because it was created after the request was received. *See Economic*

Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the present 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.” Gov’t Code § 552.101. This exception encompasses information made confidential 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 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). You assert the responsive submitted information relates to the department’s investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also* Penal Code § 22.041(c) (concerning offense of endangering child). Upon review, we agree that some of this information, which we have marked, falls within the scope of section 261.201. You do not indicate the department has adopted a rule that governs the release of the information at issue in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude this information is confidential under section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we find you have failed to demonstrate how the remaining responsive information, which concerns crimes allegedly committed against an adult victim, is related to an investigation of alleged child

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

abuse or neglect for purposes of chapter 261 of the Family Code. Accordingly, section 261.201(a) does not apply to this information, and it may not be withheld under section 552.101 on that basis.

You generally raise common-law and constitutional privacy for the remaining responsive information. Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. The doctrine of common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. We note that the public has a legitimate interest in knowing the general details of a crime. *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975) (public has legitimate interest in details of crime and police efforts to combat crime in community).

Constitutional privacy consists of two inter-related types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599–600 (1977); Open Records Decision Nos. 600 at 3–5 (1992), 478 at 4 (1987), 455 at 3–7 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* at 7. The scope of information protected by constitutional privacy is narrower than that under common-law privacy; constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find that none of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of this information under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, you have not provided any arguments explaining how any of the information at issue falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining responsive information under section 552.101 in conjunction with constitutional privacy.

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 provide a letter from the Office of the District Attorney for the 34th Judicial District (the “district attorney’s office”) asserting that report number 12-072023 pertains to a pending criminal prosecution. Based on this representation and our review, we conclude release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) of the Government Code is applicable to report number 12-072023.

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[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 12-072069 concerns a case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) of the Government Code is applicable to this report.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 536 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold report number 12-072023 under section 552.108(a)(1) of the Government Code and report number 12-072069 under section 552.108(a)(2) of the Government Code.²

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure except to note that basic information does not include information protected by section 552.130 of the Government Code. Furthermore, we need not address the district attorney’s office’s remaining argument under section 552.103 of the Government Code except to note that the basic information held to be public in *Houston Chronicle* is generally not excepted from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

In summary, the department must withhold the responsive information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the department may withhold report number 12-072023 under section 552.108(a)(1) of the Government Code and report number 12-072069 under section 552.108(a)(2) 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 456361

Enc. Submitted documents

c: Requestor
(w/o enclosures)