



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Ms. Linda Champion
Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2013-00407

Dear Ms. Champion:

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# 475804.

The Victoria Police Department (the "department") received a request for information regarding two specified individuals. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ 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."² Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

¹Although you raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn it. See Gov't Code §§ 552.301, .302.

²The 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).

[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 some of the submitted reports were used or developed in investigations by the department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also* Penal Code §§ 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger), .041(c) (concerning offense of endangering child). In this instance, however, the requestor is the parent of the child victim named in the reports.

Further, the requestor is not the individual alleged to have committed the alleged abuse. *See* Fam. Code § 261.201(k). Accordingly, the department may not withhold the submitted information from this requestor under section 261.201(a). *Id.* However, the department must withhold the identity of the persons who made the reports of abuse, which we have marked. *Id.* § 261.201(1)(3). Additionally, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will consider your remaining argument under section 552.108 of the Government Code for this information. We also consider your argument under section 552.108 for the information that is not subject to section 261.201 of the Family Code.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, 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 that the submitted reports relate to pending criminal investigations. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of the submitted information would interfere with the detection, investigation, or 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).

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* and includes the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-88. As previously noted, section 261.201(1)(3) states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *See* Fam. Code § 261.201(1)(3). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.³

³We note this requestor has a special right of access under section 261.201(k) of the Family Code to some of the information being released. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 475804

Enc. Submitted documents

c: Requestor
(w/o enclosures)