



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2013

Ms. Rachel L. Lindsay
Counsel for Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-00520

Dear Ms. Lindsay:

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# 476531 (No. 798-12).

The Town of Flower Mound (the "town"), which you represent, received a request for information related to a specified case number. You claim the requested 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 submitted.

We first note some of the submitted information is not responsive to the present request. In this instance, the requestor specifically seeks access to information related to case number 12033500. Thus, as the submitted information related to case number 12033154 is not responsive to the present request, this decision does not address the public availability of that 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." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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[.]

Fam. Code § 261.201(a), (k), (l)(2). We find the submitted information related to case number 12033500 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a)(2). *See id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). In this instance, however, the requestor is a parent of the victim of the alleged or suspected child abuse and is not accused of committing the abuse. Therefore, pursuant to section 261.201(k) of the Family Code, the information related to case number 12033500 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of

section 261.201(a). See Fam. Code 261.201(k). Section 261.201(l)(2) provides, however, that any information excepted from disclosure under the Act or other law must be withheld. See *id.* § 261.201(l)(2). Therefore, we will address the town's claims under sections 552.101 and 552.108 of the Government Code.

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). 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 the information pertaining to case number 12033500 is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable in this instance.

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The town must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information under section 552.108(c), the town may withhold the information pertaining to case number 12033500 under section 552.108(a)(2) of the Government Code.¹

We note basic information includes an identification and description of the complainant and a detailed description of the offense. The town seeks to withhold the basic information under section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Although the town would ordinarily be required to withhold some of the basic information on privacy grounds under section 552.101, in this instance the requestor's child is the subject of the information at issue. The requestor has a special right of access under section 552.023 of the Government Code to information the town would be required to withhold from the general public to protect his child's privacy. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information

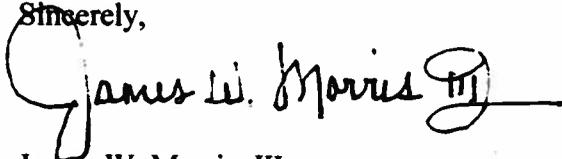
¹As we are able to make this determination, we need not address your other claim under section 552.108.

concerning herself).² Therefore, the town may not withhold any of the basic information under section 552.101 in conjunction with common-law privacy and must release that information to the requestor.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 476531

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).