



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2013

Mr. Mark G. Daniel
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2013-03089

Dear Mr. Daniel:

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# 483399 (PIA Request No. 13-41).

The Watauga Police Department (the "department"), which you represent, received a request for all reports in which requestor's name is mentioned during a specified time period. You state some responsive information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. Section 552.101 also encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part as follows:

- (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.

Fam. Code § 261.201(a). Upon review, we find report number 11-645 was used or developed in the department's investigation of alleged abuse of a child, and therefore, is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(A) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we determine report number 11-645 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ We note that because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes, and working papers" relating to an investigation of alleged or suspected child abuse, the department must not release basic front-page information in such cases.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report numbers 11-2410 and 11-1963 pertain to pending criminal cases. Based on your representation and our review of the information, we find release of these records would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976).

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,

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 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).

You state report numbers 13WP000507, 11-2719, and 11-2140 pertain to closed investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we find the information at issue relates to criminal investigations that have concluded in a final result other than a conviction or deferred adjudication.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state has already been released, the department may withhold incident report numbers 11-2410 and 11-1963 under section 552.108(a)(1) of the Government Code and report numbers 13WP000507, 11-2719, and 11-2140 under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the motor vehicle record information you have marked in report number 11-982, and the additional information we have marked, under section 552.130 of the Government Code. The remaining information in report number 11-982 must be released.

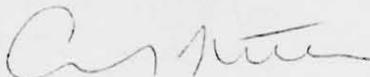
In summary, the department must withhold report number 11-645 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which you state has already been released, the sheriff’s office may withhold report numbers 11-2410 and 11-1963 under section 552.108(a)(1) of the Government Code and report numbers 13WP000507, 11-2719, and 11-2140 under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked, in addition to the information we have marked, in report

number 11-982 under section 552.130 of the Government Code. The remaining information in report number 11-982 must be released.²

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 483399

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The requestor has, pursuant to section 552.023 of the Government Code, a special right of access to her motor vehicle record information in the information being released. If the department receives a request for this information from a different requestor, the department is authorized to redact the motor vehicle record information of the requestor under section 552.130(c) without the necessity of requesting a decision under the Act. Gov't Code §§ 552.130(c)-(e).