



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. Matthew B. Cross
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2013-03465

Dear Mr. Cross:

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# 480047.

The El Paso Police Department (the "department") received a request for information pertaining to child custody incidents at a specified address involving named individuals for a specified period of time. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have also provided a letter from the Office of the District Attorney, 34th Judicial District who claims some of the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive because it does not pertain to a child custody incident. The department need not release non-responsive information in response to this request, and this ruling will not address 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 section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code. Section 261.201 provides, in relevant part, the following:

(a) The 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.

Fam. Code § 261.201(a), (k). Upon review, we find report numbers 12-112210 and 12-123276 were used or developed in investigations of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also 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 the disabilities of minority removed for general purposes). Thus, we find this information is within the scope of section 261.201 of the Family Code. Although the requestor is a parent of the child victims listed in the reports at issue, the requestor was suspected of committing the alleged or suspected abuse. Therefore, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold report numbers 12-112210 and 12-123276 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

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 state report number 12-215228 relates to a pending criminal investigation. Based on this representation and our review, we conclude the release of this 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). Thus, we agree section 552.108(a)(1) is applicable to this information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report number 12-215228 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold report numbers 12-112210 and 12-123276 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report number 12-215228 under section 552.108(a)(1) of the Government Code. The department must release the remaining responsive information.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

²We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b). We note, however, the information contains the requestor’s social security number, which may not be withheld in this instance. *See generally id.* § 552.023(b) (government body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 480047

Enc. Submitted documents

cc: Requestor
(w/o enclosures)