



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Mr. Joseph J. Gorfida Jr
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2013-07021

Dear Mr. Gorfida:

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# 485632 (File Number 13-131).

The Richardson Police Department (the "department") received a request for information pertaining to a specified report number. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains emergency protective orders that have been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed documents we marked are subject to section 552.022(a)(17). You seek to withhold this information under sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to

waiver). As such, sections 552.103 and 552.108 do not make information confidential under the Act. Therefore, the department may not withhold the court-filed documents under section 552.103 or section 552.108. However, because section 552.101 of the Government Code does make information confidential under the Act, we will address your argument under this exception for the court-filed documents as well as the remaining 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 encompasses section 261.201 of the Family Code, which provides 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.

...

(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). You assert the submitted information is subject to chapter 261 of the Family Code and note that a referral was made to Child Protective Services ("CPS"). Upon review, we find the submitted information contains a report of alleged or suspected child neglect. *See id.* § 261.001(4) (defining "neglect" for purposes of chapter 261 of the Family Code); *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). This information, which we have marked, is within the scope of section 261.201 of the Family Code. In this instance, the requestor is a parent of the child victim listed in the information at issue. However, the information at issue reflects the requestor is also alleged to have committed the suspected abuse or neglect. Accordingly, this requestor does not have a right of access to the information we have marked pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

We note the remaining information pertains to an investigation of an assault against an adult victim. *See id.* § 101.003(a). You do not explain, nor do the documents reflect, the department or CPS used or developed the remaining information in an investigation of alleged or suspected child abuse or neglect under chapter 261. Consequently, we find you have failed to demonstrate how the remaining information is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4). Accordingly, we conclude you have failed to demonstrate any of the remaining information at issue was used or developed in an investigation under chapter 261 of the Family Code, and no portion of this information may be withheld under section 552.101 on that basis.

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 the remaining information relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue 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*. *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*). Thus, except for the court-filed documents and basic information,

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

the department may withhold the remaining information from disclosure under section 552.108(a)(1) of the Government Code.²

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Except for the court-filed documents and basic information, the department may withhold the remaining information from disclosure under section 552.108(a)(1) of the Government Code. The court-filed documents and basic information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 485632

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).