ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Mr. JD Lambright
County Attorney
Montgomery County Attorney's Office
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2013-13670

Dear Mr. Lambright:

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# 495723 (ORR# 2013-2829).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for the offense report pertaining to a specified incident. You state you will release basic information as indicated in Exhibit D.[1] *See* Gov't Code § 552.108(c). You claim the remaining submitted 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 submitted information.

Initially, we note some of the information in Exhibit B is not responsive to the instant request because it does not pertain to the offense that is the basis of the specified offense report. This ruling does not address the public availability of the non-responsive information, which we have marked, and that information need not be released.

[1]Basic information refers to the information held to be public in *Houston Chronicle*. *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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

Next, 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 information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant 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 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 Chapter 552, Government Code, or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You contend the information at issue is generally confidential under section 261.201(a). We agree the information at issue 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). *See id.* § 261.001(1)(E) (defining "abuse," for purposes of Fam. Code ch. 261, as including offense of indecency with a child); Penal Code § 21.11(a) (defining child for purposes of offense of indecency with a child). As you acknowledge, however, the requestor is a representative of a parent of the child victims of the alleged or suspected abuse and the parent is not accused of committing the abuse. Therefore, the sheriff's office may not withhold any of the information at issue from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l) 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 your claim under section 552.108 of the Government 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 . . . 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 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 inform us, and have submitted an affidavit from the Montgomery County District Attorney's Office confirming, Exhibits B and D relate to a pending criminal prosecution. Based on these representations and our review, we conclude the release of the responsive information in Exhibit B and the information you have marked in Exhibit D under section 552.108 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). Therefore, the sheriff's office generally may withhold this information under section 552.108(a)(1) of the Government Code.

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 offense and arrest 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*). Basic information includes an identification and description of the complainant. The sheriff's office must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Therefore, with the exception of basic information, the sheriff's office may withhold the responsive information in Exhibit B and the marked information in Exhibit D under section 552.108(a)(1) of the Government Code.[2]

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[2]Because the present requestor has a right of access to information the sheriff's office would be required to withhold from a member of the general public, the sheriff's office should request another decision if it receives another request for this same information from a different requestor. *See* Gov't Code §§ 552.301(a), .302.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Tamara H. Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 495723

Enc. Submitted documents

c: Requestor
(w/o enclosures)