



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2013-14635

Dear Ms. Messer:

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# 497703.

The Abilene Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). We note the submitted information was used or developed by the department in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). However, the requestor, who is not alleged to have committed the suspected abuse or neglect, may be a parent, managing

conservator, or other legal representative of the child victim. Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a parent, managing conservator, or other legal representative of the child victim, then the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(1)(2) states, however, any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, in the event the requestor is a parent, managing conservator, or other legal representative of the child victim, we will consider your remaining argument against disclosure.

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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Upon review, we find that section 552.108(a)(2) is applicable to the submitted information.

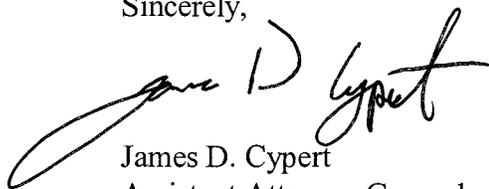
However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department must release basic information, 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*). Accordingly, if the requestor is a parent, managing conservator, or other legal representative of the child victim, then the department must release the basic information but may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim at issue in the submitted information, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim, then the department must release the basic information but may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "James D. Cypert". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

James D. Cypert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 497703

Enc. Submitted documents

c: Requestor
(w/o enclosures)