



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-20898

Dear Mr. Batoon:

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# 507392.

The El Paso Police Department (the "department") received a request for all information pertaining to case number 13-016251. You claim the 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.

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 exception encompasses information made confidential by statute, including section 48.101 of the Human Resources Code. Section 48.101 is applicable to information relating to abuse, neglect, or exploitation of elderly and disabled persons in certain facilities and provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under [chapter 48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under [chapter 48 of the Human Resources Code] or in providing services as a result of an investigation.

Hum. Res. Code § 48.101(a). You contend the submitted information is confidential under section 48.101. Upon review, however, we find you have failed to demonstrate the submitted information consists of a report of abuse, neglect, or exploitation of an elderly or disabled person or was used in an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.002 (defining “elderly person” and “disabled person” for purposes of chapter 48 of the Human Resources Code). We therefore conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 of the Government Code also encompasses 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 . . . 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.

(1) 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 [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (1)(2). Upon review, we find the submitted information was used or developed in an investigation by the department under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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, this information is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the information and is not alleged to have committed the abuse. Therefore, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(1)(2), however, provides any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201 (1)(2). Therefore, we will consider your remaining argument under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the submitted information.

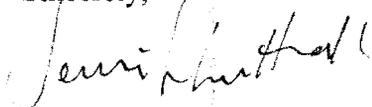
Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the

department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.¹

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 507392

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to the information being released. See Fam. Code § 261.201(k). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).