



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2014

Mr. David H. Guerra
For the City of Mission
King, Guerra, Davis & Garcia
P.O. Box 1025
Mission, Texas 78573

OR2014-01393

Dear Mr. Guerra:

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# 512165.

The City of Mission (the "city"), which you represent, received a request for three specified incident reports. You claim the requested 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 you have not submitted a copy of incident report number 11-37669. To the extent this incident report existed on the date the city received the request, we assume you have released such information. If you have not released any such information to the requestor, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we turn to your arguments for 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, 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.

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find incident report numbers 2011-34684 and 2012-12209 were used or developed in investigations of alleged or suspected child abuse or neglect by the city's police department 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). Thus, the submitted incident reports are generally confidential under section 261.201(a) of the Family Code.

In this instance, the requestor may be a parent of the child victim listed in incident report number 2012-12209. However, incident report number 2012-12209 reflects the requestor is alleged to have committed the suspected abuse or neglect at issue in that report. Therefore, even if this requestor is the parent of the child victim, she does not have a right of access to incident report number 2012-12209 pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude the city must withhold incident report number 2012-12209 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We also note the requestor may be a parent of the child victim in incident report number 2011-34684. Furthermore, the requestor is not alleged to have committed the alleged or suspected abuse or neglect in that report. Accordingly, we must rule conditionally. If the requestor is not the parent of the child victim, then the city must withhold incident report number 2011-34684 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 the parent of the child victim, then the city may not use section 261.201(a) to withhold 2011-34684 from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your argument under section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure information 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 2011-34684 relates to a pending criminal investigation. Based upon these representations and our review, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

We note, 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 basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the city may withhold incident report number 2011-34684 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold incident report number 2012-12209 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not a parent of the child victim in incident report number 2011-34684, then the city also must withhold this incident report under 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent of the child victim in incident report number 2011-34684, then with the exception of basic information, which must be released, the city may withhold this incident report under section 552.108(a)(1) 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 512165

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to the information being released from incident report number 2011-34684, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office. *See* Fam. Code § 261.201(k).