ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2014

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

OR2014-06449

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# 520427.

The City of Abilene (the "city") received a request for a specified incident report pertaining to a report of abuse or neglect of a child. You state that you have released the arrest report to the requestor. 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. 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

[1]The 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).

> 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; and
> >
> > (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2), (3). Upon review, we find the submitted information was used or developed in an investigation 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); *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, the submitted information is generally confidential under section 261.201(a) of the Family Code. We note, however, the requestor

may be the parent of the child victim for purposes of section 261.201(k). Furthermore, the parent at issue is not alleged to have committed the alleged or suspected abuse or neglect. Because it is not clear if the requestor is a parent of the victim, we must rule conditionally. If the requestor is not a parent of the child victim, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is a parent of the child victim, then the city may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). In addition, 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 the submitted information relates to an active investigation and any release of information may interfere with the investigation and prosecution of a crime. Based upon these representations, 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 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). We note basic information includes, among other items, the identification and description of the complainant and a detailed description of the offense, but does not include the identity of a victim or witness, unless the victim is also the complainant. *See* ORD 127. In this instance, the complainant is also the reporting party. As previously noted, section 261.201(1)(3) states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). *See* Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, if the requestor is not a parent of the child victim, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is a parent of the child victim, then (1) with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code; (2) in releasing basic information, the city must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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,

Abigail T. Adams

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/eb

Ref: ID# 520427

Enc. Submitted documents

c: Requestor
(w/o enclosures)