



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Teresa L. Presley
Records Manager
Frisco Police Department
7200 Stonebrook Parkway
Frisco, Texas 75034

OR2015-10025

Dear Ms. Presley:

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# 564700 (Frisco Ref. Nos. P003753-030615 and P003890-031615).

The Frisco Police Department (the "department") received two requests for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We note the requestors have a right of access to the information at issue pursuant to section 58.007(e) of the Family Code. *See* Fam. Code § 58.007(e) (parent or child may inspect information otherwise confidential under section 58.007(c) of the Family Code). If the department receives another request for this information from different requestors, the department must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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). You argue the submitted information is subject to chapter 261 of the Family Code because it was used in an investigation by the Texas Department of Family and Protective Services and was a report of alleged or suspected child abuse made to the department. *See id.* § 261.001(defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Based on your representations and our review, we find this information was used in an investigation of alleged child abuse or neglect conducted by the Texas Department of Family and Protective Services and the department, and thus, is subject to chapter 261 of the

Family Code. In this case, although the second requestor is the mother of the child victims named in the submitted information, the second requestor is alleged to have committed the suspected abuse or neglect. Thus, the second requestor does not have a right of access to the information at issue under section 261.201(k). We conclude the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code from the second requestor. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the first requestor is the father of the child victims named in the report, and is not alleged to have committed the abuse or neglect. Therefore, the department may not withhold the submitted information from the first requestor under section 261.201(a). *See* Fam. Code § 261.201(k).

However, we note section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will consider your argument under section 552.108 of the Government Code with respect to the first requestor.

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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an ongoing criminal investigation. Based on your representation, we conclude the release of the submitted information 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note, and you acknowledge, 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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.

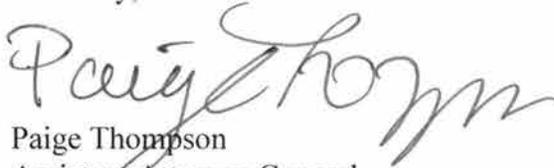
In summary, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code from the second requestor. With the exception of the basic information, which must be released to

the first requestor, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code from the first requestor.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 564700

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)