



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-13219

OR2015-21616

Dear Ms. Pemberton:

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# 589613 (Killeen ID Nos. W017332 and W017345).

The Killeen Police Department (the "department") received two requests for a specified report. You state you have released some information to the first requestor. 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 section encompasses information protected by other statutes, such as 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 Chapter 552, Government Code, 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 Juvenile Justice Department, 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), (l)(2); Act of May 29, 2015, 84th Leg., R.S., ch. 734 § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(k)). We note the submitted information was used in an investigation of alleged or suspected child abuse or neglect. *See* Fam. Code § 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); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)); Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this case, although the second requestor is the parent of the child victim named in the submitted information, he is alleged to have committed the suspected abuse or neglect. Thus, the second requestor does not have a right of access to the submitted information under section 261.201(k). *See* Act of May 29, 2015, 84th Leg., R.S., ch. 734 § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon). Accordingly, the department must withhold the submitted information in its entirety from the second requestor under

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the first requestor is a parent of the child victim named in the report and is not alleged to have committed the abuse. Therefore, the department may not withhold the submitted information from the first requestor under section 261.201(a). *Id.* However, we note section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See* Fam. Code § 261.201(1)(2). Thus, 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 did not result in conviction or deferred adjudication. *See* 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a concluded investigation. You state the department does not anticipate filing any charges in this investigation in the future. You further state the investigation did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

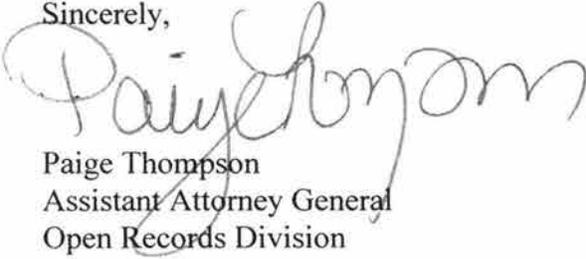
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the basic “front-page” offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 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 considered to be basic information). With the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code from the first requestor.

In summary, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) 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,

A handwritten signature in cursive script, appearing to read "Paige Thompson". The signature is written in black ink and is positioned above the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 589613

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)