



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2016

Ms. Sherri Russell
Office of the City Attorney
City of Lake Jackson
5B Oak Drive
Lake Jackson, Texas 77566-5289

OR2016-02747

Dear Ms. Russell:

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# 596875 (Lake Jackson PIR No. W001967-111015).

The Lake Jackson Police Department (the "department") received a request for two specific case numbers. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims 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 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 [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 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we agree the submitted information was used or developed in investigations by the department of alleged or suspected child abuse for purposes of section 261.201. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Therefore, we find the submitted information is within the scope of section 261.201(a). The department states, and provides documentation showing, the child victim at issue was placed with the requestor under an Agreement for Parental Child Safety Placement, and we note the requestor is not alleged to have committed the suspected abuse. Thus, the requestor may be the child victim’s legal representative. In the event the requestor is not the child victim’s legal representative, 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.¹ In the event the requestor is the child victim's legal representative, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *See id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). In addition, section 261.201(1)(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(1)(2). Thus, we will address the department's remaining arguments against disclosure of the submitted information.

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). The department states Exhibit 4 relates to an active criminal prosecution and release of the information would interfere with that prosecution. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the information at issue.

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.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibit 3 pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) 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, but is not limited to, the identity of the complainant. *See* ORD 127 at 4. Accordingly, with the exception of basic information, the department may withhold the submitted information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. However, as

¹In this event, as our ruling is dispositive, we need not address the department's remaining arguments against disclosure.

previously noted, section 261.201(1)(3) states the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(1)(3). Thus, in releasing basic information, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, in the event the requestor is not the child victim's legal representative, 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. In the event the requestor is the legal representative of the child victim, with the exception of basic information, which must be released, the department may withhold the submitted information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the identity of the reporting party, which we have marked, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 596875

Enc. Submitted documents

c: Requestor
(w/o enclosures)