



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2016

Ms. Imelda B. Rodriguez
City Secretary
City of Eagle Pass
100 South Monroe
Eagle Pass, Texas 78852

OR2016-20522

Dear Ms. Rodriguez:

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# 631730 (Records Request #s 2016-130 and 2016-131).

The City of Eagle Pass (the "city") received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is exempted 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 exempts 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 section 261.201 of the Family Code, which provides as follows:

(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

¹The 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).

(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 . . . 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 8 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. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we note the second requestor, who is not alleged to have committed the suspected abuse or neglect, may be the parent, managing conservator, or legal representative of one of the child victims. As we are unable to make this determination based on the information submitted, we must rule conditionally. If the city determines the second requestor is not a parent, managing conservator, or legal representative of the child victim, the submitted information must be withheld 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. If the city determines the second requestor is a parent, managing conservator, or legal representative of one of the child victims, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See 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). Further, section section 261.201 (l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201 (l)(2). Therefore, in the event you determine the second requestor is a parent, managing conservator, or legal representative of one of the child victims, we will address the city's argument 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 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 relates to an active criminal investigation. Based on your representation and our review, we find 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, 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *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 identity and description of the complainant, but does not include the identities of witnesses who are not complainants. *See* ORD 127. Accordingly, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, as previously noted, section 261.201(l)(3) states the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(l)(3). Thus, in releasing basic information, the city 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(l)(3) of the Family Code.

In summary, the city must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the second requestor is not a parent, managing conservator, or legal representative of one of the child victims, the city 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. If the city

determines the second requestor is a parent, managing conservator, or legal representative of one of the child victims, then, 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 to the second requestor, the city must withhold the information 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 631730

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)