KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2016

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950

OR2016-20700

Dear Mr. Gabaldón:

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# 632142 (EPD Ref. No. 16-1026-7740).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.[1] 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."[2] Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

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[1]Although you raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy, you have not submitted arguments explaining how common-law or constitutional privacy applies to the submitted information. Therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

> (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 . . . 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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *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, we find the submitted information is generally confidential under section 261.201 of the Family Code.

We note, however, the requestor is a parent of the child victim. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, 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). Therefore, we will consider your argument under section 552.108.

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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending prosecution. Based upon your representation and our review, we find section 552.108(a)(1) is applicable to the submitted information. *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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.[3]

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

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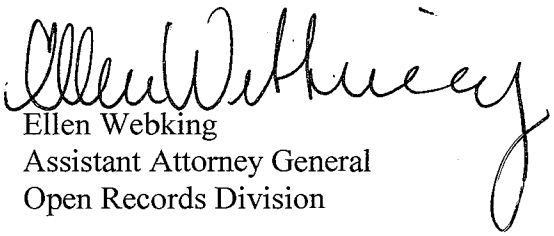
[3]Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. *See* Fam. Code § 261.201(k).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 632142

Enc. Submitted documents

c: Requestor
(w/o enclosures)