



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2016

Mr. Ryan D. Pittman  
Counsel for the City of Wylie  
Abernathy, Roeder, Boyd, & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069

OR2016-20983

Dear Mr. Pittman:

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# 626631.

The Wylie Police Department (the "department"), which you represent, received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses section 264.613 of the Family Code, which pertains to court-appointed volunteer advocate programs that provide children's advocacy services and states:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this subchapter.

(b) Information described by Subsection (a) may be disclosed to:

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<sup>1</sup>Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023 (person has right of access to information about self that is protected by laws protecting person's privacy interest).

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families;

(2) the attorney for the child who is the subject of the information; and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

Fam. Code § 264.613. We note the submitted information consists of the department's investigation of the specified incident and the related Child Protective Services report. You generally state the Collin County Children's Advocacy Center was notified of the incident at issue and is representing the child victim. However, you have not explained, nor is it apparent from the submitted information, how the information at issue was used or developed in providing specific services under subchapter G of chapter 264 of the Family Code. *See id.* 264.601(2) (defining volunteer advocate program). Thus, you have failed to demonstrate the submitted information consists of files, reports, records, communications, or working papers used or developed in providing services under subchapter G of chapter 264 of the Government Code, and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the person who is the subject of the report;  
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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)(1)-(3). Upon review, we find the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *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). Therefore, this information falls within the scope of section 261.201(a).

We note the requestor may be a representative of a parent of the child victim listed in the information. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the requestor is a representative of a parent of the child victim, we will rule conditionally. If the requestor is not a representative of a parent of the child victim listed in the submitted information, or if

the requestor is a representative of a parent, managing conservator, or legal representative of the child alleged to have committed the abuse or neglect, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Conversely, if the requestor is a representative of a parent, managing conservator, or legal representative of the child victim, and the parent, managing conservator, or legal representative of the child is not alleged to have committed the abuse or neglect, then the department may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(1) of the Family Code provides, 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 section 261.201(k) of the Family Code, any personally identifying information of any other child victims or witnesses at issue must be redacted. *Id.* § 261.201(l)(1). Additionally, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Further, section 261.201(l)(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(l)(2). Thus, to the extent the requestor is the representative of a parent of the child victim who is not alleged to have committed the abuse or neglect, we will consider your remaining arguments against disclosure.

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, and provide documentation demonstrating, the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude release of the information at issue 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). Accordingly, we conclude section 552.108(a)(1) of the Government Code is applicable to the submitted information.

We note 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 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 made public by *Houston Chronicle*). We also 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. In this instance, the complainant may be the reporting party. As noted above, section 261.201(l)(3) of the Family Code provides

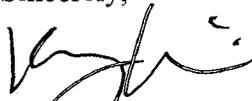
that the identity of the person who made the report must be redacted. Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, which must be released, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the identifying information of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>2</sup>

In summary, if the requestor is not a representative of a parent of the child victim listed in the submitted information, or if the requestor is a representative of a parent, managing conservator, or legal representative of the child victim alleged to have committed the abuse or neglect, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a representative of a parent, managing conservator, or legal representative of the child victim, and the parent, managing conservator, or legal representative of the child is not alleged to have committed the abuse or neglect, then, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the identifying information of the reporting party under 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 626631

Enc. Submitted documents

c: Requestor  
(w/o enclosures)