



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 6, 2017

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

OR2017-00460

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# 640614 (ID # W020586).

The Killeen Police Department (the "department") received a request for any and all records relating to the requestor during a specified time period. You state you have released some of the information to the 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.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains a court-filed document, which we have marked, that is subject to section 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* The department seeks to withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the submitted court-filed document may not be withheld under section 552.108 of the Government Code. As you raise no other exceptions to disclosure for this information, the department must release the court-filed document pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments for the information not subject to section 552.022 of the Government Code.

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. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find report numbers 13-013385, 14-007090, 14-015662, and 15-010992 were used or developed in investigations of alleged or suspected child abuse or neglect by the department. *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, we find these reports are subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the department must withhold report number 14-007090 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). However, we note the requestor is the child victim listed in report numbers 13-013385 and 14-015662, and the requestor is now an adult. Additionally, we note the requestor is a parent of the child victim listed in report number 15-010992, and is not alleged to have committed the suspected abuse. Thus, pursuant to section 261.201(k), report numbers 13-013385, 14-015662, and 15-010992 may not be withheld from this requestor under section 552.101 of the Government Code 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 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 must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider the applicability of other exceptions to disclosure of report numbers 13-013385, 14-015662, and 15-010992.

Section 552.108(a) 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: (1) 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

information at issue 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, 710 (Tex. 1977). You state report numbers 13-013385, 15-014678, and 16-008365 relate to pending criminal investigations. Based on this representation, we conclude the 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to report numbers 13-013385, 15-014678, and 16-008365.

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 information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report numbers 13-013417, 14-015662, and 15-010992 pertain to concluded criminal cases that did not result in conviction or deferred adjudication. Based on your representations and our review, 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). 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 basic information, which you state you have released, the department may withhold report numbers 13-013385 and 15-014678 and the information not subject to section 552.022(a)(17) of the Government Code in report number 16-008365 under section 552.108(a)(1) of the Government Code and report numbers 13-013417, 14-015662, and 15-010992 under section 552.108(a)(2) of the Government Code. As noted above, section 261.201(l)(3) of the Family Code states the identity of the reporting party shall be withheld from disclosure. Fam. Code § 261.201(l)(3). Accordingly, in releasing the basic information related to report number 13-013385, 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(l)(3) of the Family Code.

In summary, the department must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. The department must withhold report number 14-007090 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which you state you have released, the department may withhold report numbers 13-013385 and 15-014678 and the remaining information in report number 16-008365 under section 552.108(a)(1) of the Government Code and report numbers 13-013417, 14-015662,

and 15-010992 under section 552.108(a)(2) of the Government Code.<sup>1</sup> In releasing the basic information related to report number 13-013385, 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/akg

Ref: ID# 640614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor has a right of access to the basic information being released from report number 13-013417 pursuant to section 58.007(e) of the Family Code and the basic information being released from report numbers 13-013385, 14-015662, and 15-010992 pursuant to section 261.201(k) of the Family Code. *See* Fam. Code §§ 58.007(e) (parent or child may inspect information otherwise confidential under section 58.007(c) of the Family Code), 261.201(k). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).