



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2017

Mr. Ryan D. Pittman  
Counsel for City of Wylie  
Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75070-1210

OR2017-17711

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# 670260.

The Wylie Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. 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.

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 [subchapter G of chapter 264 of the Family Code] 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:

(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 file involving the specified incident. 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 services for purposes of 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 information at issue consists of files, reports, records, communications, or working papers used or developed in providing services under subchapter G of chapter 264 of the Family 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 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[.]

*Id.* § 261.201(a), (k), (l)(2). The submitted information consists of a report of alleged or suspected child abuse or neglect made to 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 this information is subject to section 261.201 of the Family Code. We note the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue 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)(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 your remaining arguments for 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 pertains to an active criminal investigation. Based on your 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 (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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). 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.<sup>1</sup>

You seek to withhold the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the requestor is a parent of the child victim listed in the report. See Gov't Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to his minor child that would otherwise be confidential under common-law privacy and it may not be withheld from him under section 552.101 on that basis. Further, we find none of the basic information pertaining to an individual other than the requestor or his minor child is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department may not withhold any portion of the basic information from this requestor under section 552.101 on the basis of common-law privacy.

---


<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, with the exception of basic information, which must be released to this requestor, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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,



Rahat S. Huq  
Assistant Attorney General  
Open Records Division

RSH/sb

Ref: ID# 670260

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.