



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2017

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-28699

Dear Mr. Kopp:

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# 688440 (COSA File No.: W186418).

The City of San Antonio (the "city") received a request for police reports involving the requestor at specified addresses during a specified period of time. You state you will redact information pursuant to sections 552.130, 552.136, and 552.147 of the Government Code and dates of birth pursuant to Open Records Letter No. 2016-08566 (2016).¹ You claim

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2016-08566 is a previous determination authorizing the city to withhold the dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

some of 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 not responsive to the present request because it is outside the date range specified by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to this request.²

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 made confidential by other statutes, such as section 261.201(a) 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.

Fam. Code § 261.201(a). You state report number 2016-0622690 pertains to an investigation of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the city’s police department has adopted any rules that would permit the release of the responsive information. Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. Therefore, we conclude report number 2016-0622690 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.108(a) of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A); Open Records Decision No. 434 (1986). You state report number 2016-0674942 pertains to a pending criminal investigation. Based upon this representation, we conclude that the release of this report 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 report number 2016-0674942. You also state report numbers 2016-0554012 and 16-0585585 pertain to closed criminal investigations that concluded in results other than convictions or deferred adjudications. Thus, section 552.108(a)(2) is applicable to report numbers 2016-0554012 and 16-0585585.

However, we note, 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 “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the city may withhold report number 2016-0674942 under section 552.108(a)(1) of the Government Code and report numbers 2016-0554012 and 16-0585585 under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold report number 2016-0622690 under section 552.101 of the Government Code pursuant to section 261.201 of the Family Code. With the exception of basic information, which must be released, the city may withhold report number 2016-

0674942 under section 552.108(a)(1) of the Government Code and report numbers 2016-0554012 and 16-0585585 under section 552.108(a)(2) of the Government Code. The city must release the remaining responsive information.⁴

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 688440 (COSA File. No.: W186418)

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.