February 22, 2018

Mr. Ryan D. Pittman  
Counsel for the City of Wylie  
Abernathy, Roeder, Boyd & Hullett, PC  
P.O. Box 1210  
McKinney, Texas 75069-1210

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# 697398.

The Wylie Police Department (the “department”), which you represent, received a request for information related 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. This section encompasses information protected by section 261.201 of the Family Code, which 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[.]

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 by the department. See id. §§ 101.003(a) (defining “child” for purposes of section 261.201 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) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, the submitted information is subject to section 261.201 of the Family Code. However, we note the requestor is a parent of the child victim and is not alleged to have committed the alleged abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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 the department’s argument under section 552.108 of the Government Code 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 information at issue.

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). 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, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.1

The department asks this office to issue a previous determination that would permit it to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision form this office. We decline to issue such a previous determination at this time.

The department also asks us to issue a previous determination permitting the department to withhold information subject to section 552.108(a)(1) of the Government Code without the necessity of requesting an attorney general opinion. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Houston Chronicle v. Mattox, 767 S.W.2d 695, 698 (Tex. 1989) (acknowledging this office has authority under section 552.301 of the Government Code to decide what constitutes a previous determination); Open Records Decision No. 673 (2001) (describing the two types of previous determinations). We note section 552.011 of the Government Code states “[t]he attorney general shall maintain uniformity in the application, operation, and interpretation” of the Act, chapter 552 of the Government Code. Gov’t Code § 552.011. Pursuant to this legislative mandate, section 552.011 grants the attorney general the authority to “prepare, distribute, and publish any materials, including detailed and comprehensive written decisions and opinions, that relate to or are based on” the Act. Id. We further note the Act requires governmental bodies to promptly release public information requested under the Act within a reasonable time, without delay. Id. § 552.221(a); Open Records Decision No. 664 at 5 (2000).

1As our ruling is dispositive for this information, we need not consider your remaining argument against disclosure.
With the foregoing in mind and upon due consideration, we issue this ruling, which constitutes a previous determination allowing the department to withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting an attorney general decision, so long as the department has not previously received a request for the information from the same requestor in the manner described below. See ORD 673. This decision is intended to encourage the prompt release of requested public information by increasing the efficiency of the review process under the Act by clearly identifying information the department may withhold under the circumstances delineated below. See Gov’t Code §§ 552.011, .221; Open Records Decision Nos. 684 (2009), 673.

Accordingly, the department may withhold certain information under section 552.108(a)(1) of the Government Code without the necessity of first requesting a ruling from this office in the following circumstances:

1. the department makes a good faith determination that the information at issue relates to the detection, investigation, or prosecution of crime, and the release of the information would interfere with the detection, investigation, or prosecution of an open or pending criminal matter;

2. the department will release at least the basic information about an arrested person, an arrest, or a crime (the “releasable information”) from the requested information;

3. the department will produce the releasable information to the requestor pursuant to the requirements of the Act within five business days after the date the request for information was received;

4. the department will provide the requestor with the notice included in Appendix A of this ruling when the department responds to the request pursuant to the requirements of this previous determination; and

5. the department has not previously received a request for the same information from the same requestor after the department has provided the requestor with the releasable information.

See Gov’t Code § 552.011. If any of the above circumstances change—or any other law, facts, or circumstances involving the requestor or the status of the requested information changes—the department may not rely upon this ruling as a previous determination to withhold the information at issue. See ORD 673 at 7. Additionally, the department may not rely on this previous determination in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the department may not rely upon this previous determination in response to those types of requests. Furthermore, this
previous determination does not apply to situations in which other law may require some or all of the information at issue to be disclosed. *See, e.g.*, Crim. Proc. Code arts. 2.1396 (detailing right of access to videos made in connection with various types of driving while intoxicated offenses), 2.29 (detailing right of access to written report to law enforcement agency of alleged violation of Penal Code section 32.51); Gov’t Code §§ 411.081-.1410 (detailing rights of access to criminal history record information), 560.002(1)(A) (detailing rights of access to fingerprints and other biometric identifiers); Transp. Code §§ 550.065 (detailing rights of access to crash report forms), 724.018 (detailing right of access to blood or breath specimen analysis results). We also note this previous determination does not permit the disclosure of basic information in those instances in which the entirety of the information at issue must be withheld. *See, e.g.*, Fam. Code §§ 58.008 (detailing circumstances under which certain information related to juvenile offenders must be withheld in its entirety), 261.201 (detailing circumstances under which certain information related to investigations of child abuse or neglect must be withheld in its entirety); Open Records Decision No. 393 (1983) (stating, because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body was required to withhold the information in its entirety). We further note this previous determination does not permit the department to withhold citations; DIC-24 statutory warnings; DIC-25 notices of suspension; criminal trespass warnings; notices of code violations; triplicate forms; or information subject to section 552.007 or section 552.022 of the Government Code, other than information subject to section 552.022(a)(1). *See* Gov’t Code §§ 552.007, .022(a)(1)-(18), .108(a)(1). However, the use of this previous determination does not preclude the department from withholding information pursuant to other statutory authority or previous determinations that apply to the department. *See, e.g.*, *id.* §§ 552.1175(f), .130(c), .136(c), .147(b); ORD 684.

If the department’s use of this previous determination does not fall within all of the circumstances delineated above, the requirements of the Act apply, including section 552.301 of the Government Code, and deadlines under the Act run from the date the department received the initial written request for information. *See* Gov’t Code § 552.301(a); *Mattox*, 767 S.W.2d at 698. Consequently, misapplication of this previous determination may result in the presumption the requested information is public. *See* Gov’t Code § 552.302. Thus, if the department is unsure as to the applicability of this previous determination to information responsive to a request for information, the department should request a ruling from this office. Additionally, this office may modify or withdraw this previous determination for any reason, including, but not limited to, misapplication of this previous determination. *See id.* § 552.011; *Mattox*, 767 S.W.2d at 698; *see also* Open Records Decision Nos. 485 at 3 (1987), 673 at 5. Finally, if the department later requests a ruling from this office in response to a second request for the same information from the same requestor, the department should notify this office it relied upon this previous determination in its response to the initial request.
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,

Joseph Bynke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 697398

Enc. Submitted documents

c: Requestor
    (w/o enclosures)
Appendix A

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Dear M:

NOTICE:

On [date], we received your public information request for [description of information requested], dated [date request written] (the “request”). In order to promote governmental efficiency and encourage the prompt release of information, as required by the Public Information Act, we have relied upon Open Records Letter No. 2018-04140 (2018) in responding to your request. We do so within five business days of your request.

The department has made a good faith determination the information you requested:

- deals with the detection, investigation, or prosecution of crime and the release of the records would interfere with the detection, investigation, or prosecution of an open or pending criminal matter.

This information is subject to section 552.108(a)(1) of the Government Code. The department has also determined you have not previously requested this information. Therefore, pursuant to the previous determination granted by the Office of the Attorney General in Open Records Letter No. 2018-04140, the department is releasing some information to you, and is withholding the remaining responsive information subject to section 552.108(a)(1) of the Government Code.

Please note, we are withholding the following specified types of information:

- Incident report (except basic information)
- Witness/suspect interview(s)
- Video recording(s)
- Audio recording(s)
- Other: (specify documents withheld)

If you have questions regarding the use of this previous determination, please call the department at XXX-XXX-XXXX, or for more information concerning your rights and the responsibilities of the department, please visit the Office of the Attorney General’s website at https://www.texasattorneygeneral.gov/og/information-about-552.108a1-previous-determinations, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. You may also review general information about the Public Information Act, including the types of information included in basic information, in the 2018 Public Information Handbook at http://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf.

1If you request this information a second time, the department must request a ruling from the Office of the Attorney General (the “OAG”) in order to withhold the information. See Open Records Letter No. 2018-04140.