



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Mr. Ronald D. Stutes
Counsel for the City of Palestine
Potter Minton, P.C.
500 Plaza Tower
110 North College Avenue
Tyler, Texas 75702

OR2019-10596

Dear Mr. Stutes:

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# 761404.

The City of Palestine (the "city"), which you represent, received a request for a specified incident report. The city claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 261.201(a) of the Family Code, which provides as follows:

[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). Upon review, we find the submitted information may have been used or developed by the city's police department (the "department") in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). However, we are unable to determine the age of the victim at issue in the submitted report. Accordingly, we must rule conditionally. The city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Consequently, if the victim at issue in the submitted report was under eighteen years of age at the time of the offense, then the city 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. However, if the victim was eighteen years of age or older at the time of the offense, then the city may not withhold the submitted information on this basis.

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). The city states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information 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).

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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses section 21.12 of the Penal Code. Section 21.12(a) provides a public or private primary or secondary school employee commits

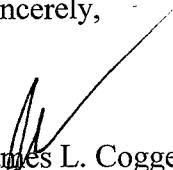
an offense if the employee “engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private secondary school at which the employee works[.]” Penal Code § 21.12(a)(1). Further, section 21.12(d) provides “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under [the Act].” *Id.* § 21.12(d). The submitted information pertains to an investigation of an alleged improper relationship between a public school employee and a student. *See id.* § 21.12(a). Therefore, in releasing basic information, the city must withhold the student victim’s name under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code.¹

In summary, if the student victim at issue in the submitted report was under eighteen years of age at the time of the offense, then the city 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 student victim was eighteen years of age or older at the time of the offense, then the city (1) must withhold the student victim’s name under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code; (2) must release the remaining basic information; and (3) may withhold the remaining information under section 552.108(a)(1) of the Government 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

¹As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

Ref: ID# 761404

Enc. Submitted documents

c: Requestor
(w/o enclosures)