



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2020

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78207

OR2020-11367

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# 823336 (ORR W302648).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified incident.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

As you acknowledge, the department failed to comply with section 552.301 of the Government Code. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the

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<sup>1</sup> We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us the Bexar County District Attorney's Office (the "district attorney's office") objects to the release of the submitted information, we will consider whether the department may withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to 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 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted 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 this information is subject to chapter 261 of the Family Code. We note the requestor may be the legal representative of one of the child victims listed in the submitted information and is not alleged to have committed the abuse or neglect. Thus, if the requestor is not the legal representative of the one of the child victims, then, as the department does not indicate the department has adopted a rule that governs the release of this type of information, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). In the event the requestor is the legal representative of the child victim, the requestor has a right of access to the submitted information pursuant to section 261.201(k) and this information may not be withheld from the requestor under section 261.201(a). *See* Fam. Code § 261.201(a), (k). However, we note section 261.201(l)(3) states the identity of the person who made the report shall be withheld from disclosure. *Id.* § 261.201(l)(3). In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(f)(2). Therefore, in the event the requestor is the legal representative of the child victim, we address the department’s arguments to withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney’s office.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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, and submit documentation demonstrating, the district attorney’s office objects to the release of the submitted information because it pertains to a pending criminal prosecution. Based upon this representation and our review, we conclude section 552.108(a)(1) is applicable, and the release of the submitted 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 (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).

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<sup>3</sup> In this case, as we are able to make this determination, we need not address the remaining exception to disclosure claimed for the submitted information, nor the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity and description of the complainant but does not include witnesses or involved parties who are not the complainant. See *id.* In this instance, the complainant is also the reporting party. As noted above, section 261.201(1)(3) of the Family Code provides that the identity of the person who made the report must be redacted. Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.<sup>4</sup> However, in releasing basic information, the department must withhold the reporting party’s identifying information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not the legal representative of the one of the child victims, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the legal representative of one of the child victims, then, with the exception of basic information, which must be released, the department may withhold the submitted under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office. However, in releasing basic information, the department must withhold the reporting party’s identifying information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/rm

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<sup>4</sup> As we are able to make this determination, we need not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. See generally Occ. Code § 1701.661(a), (e).

Ref: ID# 823336

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosure)