



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2022

Mr. Carlos G. Madrid  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2022-14420

Dear Mr. Madrid:

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# 948172 (ORR# 0241-22-PI).

The El Paso County Sheriff's Office (the "district attorney's office") received a request for a specified incident report. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the claimed exception 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 section 261.201 of the Family Code, which provides, in relevant part, as follows:

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<sup>1</sup> We note the district attorney's office did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, section 552.101 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Thus, we will consider whether the submitted information must be withheld on those grounds.

(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.

...

(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 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). Thus, the submitted information is within the scope of section 261.201(a). However, we note the requestor, who is not alleged to have committed the suspected abuse, may be a parent, managing conservator, or other legal representative of the child victim. Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the district attorney’s office must

withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim, then the district attorney's office may not withhold the submitted information from this requestor 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 be redacted. *Id.* § 261.201(l)(2). Therefore, in the event the requestor is a parent, managing conservator, or other legal representative of the child victim, we must determine whether the information at issue is otherwise excepted from release under the Act.

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 El Paso County District Attorney’s Office (the “district attorney’s office”) objects to the release of the submitted information because it 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 the *Houston Chronicle* decision. *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* decision). Thus, with the exception of basic information, the district attorney’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim, then the district attorney’s office must release basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 948172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)