



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Kevin Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-2681

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119470.

The McAllen Police Department (the "department") received an open records request for three offense reports. You state that the department has released to the requestor the "front page offense report information" from the offense reports "if appropriate." You contend that the remaining information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We will discuss the public nature of each of the requested offense reports in turn.

Offense Report No. 98-021665 pertains to a report of criminal mischief allegedly committed by a juvenile. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Because Offense Report No. 98-021665 comes within the scope of section 58.007(c), we conclude that the department must withhold this report in its entirety pursuant to section 552.101 of the Government Code.

The report pertaining to Case No. 98-023664 concerns a telephone threat. You inform us that the investigation connected to this offense is pending. Section 552.108(a)(1) of the Government Code exempts from required public 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[.]” Because you have informed us that the records at issue pertain to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement. The department therefore may withhold most of the information at issue at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, exempt from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department therefore must release these types of information in accordance with *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Finally, Offense Report No. 98-002112 pertains to an alleged injury to a child. Section 261.201(a) of the Family Code provides:

The 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 [of a child] made under this chapter and the identity of the person making the report; and

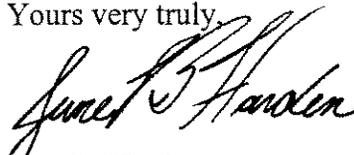
(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

As noted above, the records at issue pertain to an alleged injury to a child. Consequently, section 261.201 of the Family Code applies to Offense Report No. 98-002112. You have not informed this office of any rules the department has adopted that would permit access to the

requested records. Because the information at issue pertains to an investigation of an injury to a child, this office concludes that the department must withhold this offense report in its entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/ch

Ref.: ID# 119470

Enclosures: Submitted documents

cc: Ms. Janie Marie Garza
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(w/o enclosures)