



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2003

Mr. Loren B. Smith
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-6126

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186865.

The City of Friendswood (the "City"), which you represent, received a request for all reports concerning the requestor and incidents occurring at a specific address since 1988. You indicate that you will release some of the requested information, but argue that the remainder of the requested 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 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the City's assertion and our review of Exhibit A, we agree that these offense reports have concluded in results other than convictions or deferred adjudications. Consequently, the City may withhold Exhibit A in its entirety pursuant to section 552.108(a)(2) of the Government Code.

Section 552.108 is inapplicable, however, to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, you may withhold all offense reports contained in Exhibit A based on section 552.108(a). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Next we turn our attention to Exhibit B. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a) of the Family Code provides as follows:

(a) 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 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Exhibit B, with the exception of offense report number 01-02-000565, contains documents that relate to allegations of child abuse. Therefore, all of Exhibit B except offense report number 01-02-000565 is within the scope of section 261.201 of the Family Code. You have not indicated that the City has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit B, except offense report 01-02-000565, is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the City must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.¹ Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the city must not release front page offense report information in cases of alleged child abuse. Because the City has proffered no other argument to support withholding offense report 01-02-000565, it must be released to the requestor.²

Finally, we find that all reports contained in Exhibit C are confidential under section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on

¹ We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

² Report 01-02-000565 contains a Texas driver’s license number and social security number. Ordinarily these items would be confidential under section 552.130 of the Government Code and the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), respectively. However, because these provisions protect a person’s privacy, the requestor has a special right of access to his own information. *See* Gov’t Code § 552.023(a),(b).

or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

All reports in Exhibit C pertain to calls for service regarding a runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(a)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). We therefore determine that the City must withhold Exhibit C from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, except for basic information, all of Exhibit A may be withheld under section 552.108(a)(2) of the Government Code. The City must withhold Exhibit B under section 261.201 of the Family Code, except for offense number 01-02-000565, which must be released to the requestor. Lastly, the City must withhold all of Exhibit C under section 58.007 of the Family Code as encompassed by section 552.101.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 186865

Enc: Submitted documents

c: Mr. Bruce Lee Gautney
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(w/o enclosures)