



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2004

Mr. Loren B. Smith  
Olson & Olson  
2727 Allen Parkway, #600  
Houston, Texas 77019-2115

OR2003-9022A

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# 197789.

On behalf of the City of Friendswood, which you represent, you ask this office to examine Open Records Letter No. 2003-9022 (2003). We note that section 552.301 of the Government Code provides that a governmental body is prohibited from asking for a reconsideration of the attorney general's decision. *See Gov't Code § 552.301(f)*. However, where this office determines that the decisional process under sections 552.301 and 552.306 has resulted in an incorrect ruling, we will correct the previously issued ruling. As we have determined that Open Records Letter No. 2003-9022 (2003) is incorrect, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2003-9022 (2003) and serves as the correct ruling.

The City of Friendswood (the "city") received a request for information relating to all incidents involving a particular address during a specified time interval, including information relating to two specific incident numbers. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We note that one of the incident reports in Exhibit C does not fall within the time interval specified by the requestor and thus is not responsive to his request. This decision is not applicable to the non-responsive report, which we have marked, and the city need not release that information.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. The city contends that the information submitted as Exhibit A is confidential under section 261.201 of the Family Code. Chapter 261 of the Family Code governs information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(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, 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); *see also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). We agree that all of the information submitted as Exhibit A is confidential under section 261.201(a). You do not inform us of any rule adopted by the city that would allow the release of this information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the city must withhold the information submitted as Exhibit A under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.<sup>1</sup>

The city also raises section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 58.007 provides in part:

(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:

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<sup>1</sup>We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

- (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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The city contends that all of the information submitted as Exhibit B is confidential under section 58.007(c). We find that section 58.007(c) is applicable to some of that information. The city must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

The city also raises section 552.108 of the Government Code. Section 552.108(a)(2) excepts 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the remaining information in Exhibit B and all of the responsive information in Exhibit C relates to incidents that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to all of the remaining responsive information.

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 front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976)

(summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information with regard to each of the incidents to which the remaining responsive information pertains, including a detailed description of each offense, even if the information does not literally appear on the front page of an offense or arrest report. The city may withhold the remaining information in Exhibits B and C under section 552.108(a)(2). We note that the city has discretion under section 552.108 to release additional information that is not otherwise confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to Gov't Code § 552.108 did not prohibit release of information).

In summary: (1) the city must withhold all of the information in Exhibit A under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the city must withhold the marked information in Exhibit B under section 552.101 in conjunction with section 58.007 of the Family Code; and (3) the city may withhold the rest of the responsive information in Exhibits B and C under section 552.108(a)(2), except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we do not address your claim under section 552.108(b)(2).

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,

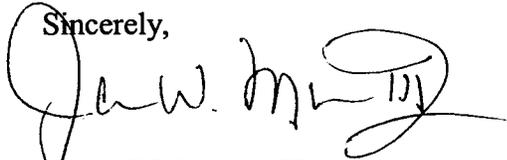
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 197789

c: Mr. Robert C. Iorio  
1109 West Edgewood  
Friendswood, Texas 77546  
(w/o enclosures)