



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2004-3137

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199786.

The Austin Police Department (the "department") received a request for all family disturbance reports made at two addresses during a specific time period. You state that some of the responsive information has been provided to the requestor. You claim, however, that 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 information.

Initially, you claim that one of the submitted records is confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. 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, 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. We agree that the documents you have marked were used or developed in an investigation of child abuse. Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that these records are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Next, you contend that some of the remaining records are confidential under sections 51.14 and 58.007 of the Family Code. Section 51.14(d) makes confidential juvenile law enforcement records concerning juvenile conduct that occurred before January 1, 1996. *See* Open Records Decision No. 644 at 5 (1996) (explaining that although Fam. Code § 51.14 was repealed, law continues in effect to protect law enforcement records concerning juvenile conduct that occurred before January 1, 1996). Section 58.007(c) makes confidential juvenile law enforcement records concerning juvenile conduct occurring on or after September 1, 1997. Records concerning juvenile conduct that occurred from January 1, 1996 to August 31, 1997 are not confidential by law. *See id.* (holding that Fam. Code § 58.007 does not make confidential juvenile law enforcement records concerning juvenile conduct occurring January 1, 1996 to August 31, 1997). Although you contend that one of the submitted reports is confidential under section 51.14(d), the records themselves do not indicate the age of the suspect. Accordingly, we cannot conclude that these records are subject to section 51.14(d). You also contend that one of the submitted offense reports is confidential under section 58.007(c). We note, however, that the conduct at issue occurred during the period when juvenile law enforcement records were not confidential. Accordingly, none of the submitted records are confidential under section 51.14(d) or section 58.007(c) of the Family Code.

¹We note, however, that if the Texas Department of Family and Protective 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); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (stating that reference in law to Department of Protective and Regulatory Service means Department of Family and Protective Services”).

Finally, you assert that all of the remaining information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) 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[.]

Gov't Code § 552.108(a)(1), (2). 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. You explain that all of the remaining records concern closed criminal investigations that concluded in results other than conviction or deferred adjudication. After reviewing your arguments and the remaining records, we conclude that you have shown the applicability of section 552.108(a)(2).

We note, however, that section 552.108 is inapplicable to 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 *Houston Chronicle Publishing 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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, we conclude that the department may withhold the remaining offense reports under section 552.108(a)(2).² Although section 552.108(a)(2) authorizes you to withhold this information from disclosure, you may choose to release all or part of it that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, you must withhold the marked offense report under section 261.201 of the Family Code. With the exception of basic information, all of the remaining reports may be withheld under section 552.108(a)(2).

²We note that some of the basic information subject to release may be confidential with respect to the general public. *See* Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning himself or herself). If the department should receive another request for this information from an individual other than the requestor or her authorized representative, the department should seek another ruling from this office. *See* Gov't Code § 552.352 (providing criminal penalties for release of confidential information).

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).

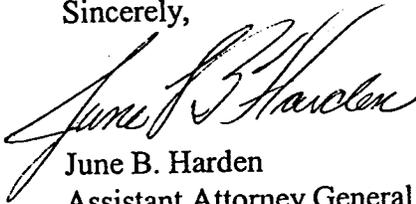
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "June B. Harden". The signature is fluid and cursive, with the first name "June" being the most prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 199786

Enc: Submitted documents

c: Ms. Margo Emmons
213 Starbright Drive
Austin, Texas 78745
(w/o enclosures)