



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2004

Ms. Florence R. Upton  
Assistant City Attorney  
City of San Antonio  
P. O. Box 839966  
San Antonio, TX 78283-3966

OR2004-10917

Dear Ms. Upton:

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# 215651.

The San Antonio Police Department (the "department") received a request for six specific incident reports. 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 claim and reviewed the submitted information.

First, we note that the submitted information in report number 04-690304 contains an affidavit to support a search warrant. The affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). The submitted documents indicate that the search warrant at issue was executed. Therefore, the department must release the search warrant affidavit under article 18.01(b) of the Code of Criminal Procedure. *See* Code Crim. Proc art. 18.01(b); *see also* Open Records Decision No. 525 (1989) (exceptions found in predecessor to Act do not, as a general rule, apply to information that is made public by other statutes).

We also note that the search warrant in report number 04-690304 is a court record and subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. One such category is "information that is also contained in a public court record[.]" Gov't Code § 522.022(a)(17). This information is subject to required release

except to the extent it is expressly confidential under other law. You assert section 552.108 of the Government Code in support of withholding this information. Section 552.108, however, is a discretionary exception within chapter 552 of the Government Code and not other law that makes information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, this document may not be withheld under section 552.108. You do claim, however, that this information is confidential by law under section 261.201 of the Family Code and therefore excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. Section 261.201 of the Family Code 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, 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). You assert that report numbers 03-668014 and 04-690304 are within the scope of section 261.201 of the Family Code. After reviewing your arguments and the information at issue, we conclude that this information does not constitute files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See generally* Fam. Code § 261.001 (defining abuse and neglect). Therefore, the information at issue is not confidential under section 261.001, and it may not be withheld under section 552.101 of the Government Code on that basis.

We now turn to your arguments for the information in report numbers 03-567486, 04-077439, 03-577143, and 03-578904. Section 552.101 also encompasses information made confidential by section 58.007 of the Family Code, which makes certain juvenile law enforcement records confidential. Section 51.04(a) of the Family Code states that the Juvenile Justice Code, Title 3 of the Family Code, “covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the

conduct.” Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. The relevant language of section 58.007(c) reads 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.

Fam. Code § 58.007(c). After reviewing the submitted information, we conclude that report number 03-567486 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, report number 03-567486 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information at issue from disclosure under section 552.101 of the Government Code. Report numbers 04-077439, 03-577143, and 03-528904 do not involve delinquent conduct or conduct indicating a need for supervision, are not confidential under section 58.007, and may not be withheld on this basis. See Fam. Code § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). As you raise no other exceptions to disclosure and the information at issue is not otherwise confidential by law, you must release report numbers 04-077439, 03-577143, and 03-528904 to the requestor.

You also assert that information regarding incident report number 04-690304 is excepted from disclosure under section 552.108(a)(1) of the Government Code. This section 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.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that this incident report is the subject of a pending prosecution. Based upon this representation, we conclude that the release of information pertaining to this

incident 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 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, 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). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the affidavit to support the search warrant must be released under article 18.01(b) of the Code of Criminal Procedure. The search warrant must be released under section 552.022(a)(17) of the Government Code. Report number 03-567486 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Report numbers 04-077439, 03-577143, and 03-528904 must be released. Although the basic information for report number 04-690304 must be released under section 552.108(c), the remaining information regarding this incident may be withheld under section 552.108(a)(1) of the Government Code.

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,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krf

Ref: ID#215651

Enc. Submitted documents

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(w/o enclosures)