



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2005

Ms. Alison Holland
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2005-09206

Dear Ms. Holland:

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# 234162.

The City of Jersey Village (the "city"), which you represent, received a request for "police inter-office reports made between" four named individuals, as well as any materials taken from the requestor's house. You state that you have or will release basic information from the responsive incident reports, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information submitted as Exhibit A is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). 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). We have reviewed the information submitted as Exhibit A and find that it involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Thus, the information submitted as Exhibit A is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this information is confidential in accordance with section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

Next, we address your arguments for withholding the remaining information. Section 552.101 also encompasses section 261.201(a) of the Family Code, which 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.

Fam. Code § 261.201(a). The information submitted as Exhibit C was used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find that the information submitted as Exhibit C 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, this information 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 it from disclosure under section 552.101 of the Government Code as information made confidential by law.

You claim that the information submitted as Exhibit D is confidential under section 552.101 in conjunction with articles 63.015 and 63.017 of the Code of Criminal Procedure. Article 63.015 provides as follows:

(a) On the request of any law enforcement agency, a city or state agency shall furnish the law enforcement agency with any information about a missing child or missing person that will assist in completing the investigation.

(b) The information given under Subsection (a) of this article is confidential and may not be released to any other person outside of the law enforcement agency.

Crim. Proc. Code art. 63.015. We note that article 63.015 is only applicable to information that is provided to a law enforcement agency by *another* city or state agency. In this instance, the information for which you claim article 63.015 consists of an offense report created and maintained by the city's police department. Thus, as this offense report was not created by another city or state agency, we find that you have failed to demonstrate the applicability of article 63.015 of the Code of Criminal Procedure to this offense report, and it may not be withheld under section 552.101 on that basis. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception).

Article 63.017 provides as follows:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Crim. Proc. Code art. 63.017. "Clearinghouse" is defined as the missing children and missing persons information clearinghouse, which is established within the Department of Public Safety. *See id.* arts. 63.001(7), .002(a). As we noted before, the offense report submitted as Exhibit D was created and maintained by the city's police department. As such, this report is not a clearinghouse record. Therefore, we conclude that you have failed to demonstrate the applicability of article 63.017 of the Code of Criminal Procedure to the offense report at issue, and it may not be withheld under section 552.101 on that basis. *See* Gov't Code § 552.301(e)(1).

You claim that the information submitted as Exhibits B and D is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (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). 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), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information submitted as Exhibit B relates to a pending criminal investigation. Thus, based on your representations and our review, we determine that the release of the information submitted as Exhibit B would interfere with the detection, investigation, or prosecution of crime, and we therefore agree that section 552.108(a)(1) is applicable to this information. *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). You also advise that the information submitted as Exhibit D relates to a case that concluded in a final result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to the information submitted as Exhibit D. Thus, with the exception of basic information, which you state has been or will be released, the city may withhold the information submitted as Exhibits B and D pursuant to section 552.108 of the Government Code.

In summary, the city must withhold the information submitted as Exhibit A under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must also withhold the information submitted as Exhibit C under section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, which you state has been or will be released, the city may withhold the information submitted as Exhibits B and D under section 552.108 of the Government Code. As our ruling is dispositive, we need not address your remaining claim against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

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Enc. Submitted documents

c: Mr. Robert Gant
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(w/o enclosures)