



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Mr. Floyd M. Akers
City Attorney
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2007-06669

Dear Mr. Akers:

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# 279585.

The Pflugerville Police Department (the "department") received a request for "all police reports" involving three named individuals, including the requestor. You state that you have provided the requestor with a portion of the requested information. You claim that the remaining 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 of the Government Code provides in part:

(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 Section 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). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast,

subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims 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. See Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you state you “must partially decline the request for the information sought pursuant to section 552.108.” Based on your statements, we are unable to determine how release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Further, we are unable to determine how the investigations have concluded in a final result other than conviction or deferred adjudication. Therefore, we find that you have failed to demonstrate the applicability of section 552.108 to the submitted information, and it may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section 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); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Because report number P04100334J and report number P04050038J were used or developed in an investigation of child abuse, the reports are 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, report number P04100334J and report number P04050038J are confidential pursuant to section 261.201 of the Family Code. See *Open Records Decision No. 440 at 2* (1986) (predecessor statute). Accordingly, the

department must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.¹

We note that the remaining documents contain information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Accordingly, the department must withhold the Texas driver’s license numbers we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold report number P04100334J and report number P04050038J in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the Texas driver’s license numbers we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.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).

¹We note that the requestor, as a parent of a child who is the subject of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

²We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 279585

Enc. Submitted documents

c: Ms. Rhonda R. Rice
1801 East Palm Valley Boulevard, #817
Round Rock, Texas 78664
(w/o enclosures)