



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 19, 2008

Lieutenant William Ryan  
Records Division  
Pharr Police Department  
1900 South Cage  
Pharr, Texas 78577-6751

OR2008-02218

Dear Lieutenant Ryan:

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# 302381.

The Pharr Police Department (the "department") received a request for all reports regarding a named individual for a specified time period. 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.

Section 552.101 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). We note that report number 2006-00009839 was used or developed in an investigation of alleged child abuse or neglect. Thus, this report 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, the report we have marked is 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 report number 2006-00009839, which we have marked, under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup>

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by

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<sup>1</sup>We 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).

Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Section 51.02(2)(A) defines "child" as a person who is ten years of age or under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007(c) is applicable to information that relates to a juvenile as a suspect or an offender, and not as a complainant, victim witness, or other involved party. *See id.* § 58.007(c). We have reviewed the submitted information and find that report numbers 2006-00056300 and 2007-00055510 involve delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. *See* Fam. Code. § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Thus, this information is subject to section 58.007(c). We note, however, that the requestor is the mother of the juvenile offender listed in these reports. Under section 58.007(e), the requestor has a right to inspect law enforcement records concerning her child. *See id.* § 58.007(e). Accordingly, these reports may not be withheld on this basis. However, section 58.007(j) states that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Moreover, section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). The remaining reports list a suspect that is seventeen years old. Therefore, these reports are not confidential under section 58.007(c) of the Family Code, and the department may not withhold them under section 552.101 of the Government Code on that basis.

You assert that portions of the submitted information are excepted under section 552.108 of the Government Code. Section 552.108(a) 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." Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you state that “[i]n this particular case there is still an ongoing investigation in progress.” You indicate in your brief that the department is awaiting blood results for one case and a district attorney opinion on official oppression charges in another case. However, you have submitted numerous reports in which you have failed to identify which information pertains to these pending investigations. 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.

We note that the some of the remaining information contains Texas driver’s license numbers.<sup>2</sup> Section 552.130 of the Government Code 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. See Gov’t Code § 552.130(a)(1). This exception protects personal privacy. Accordingly, the requestor has a special right of access to her own driver’s license information under section 552.023 of the Government Code, and that information must be released. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The department must withhold the Texas driver’s license number that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked 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 number that we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor, but the department must redact any information in report number 2007-00055510 that identifies or tends to identify a juvenile suspect, offender, victim, or witness other than the requestor’s child.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 302381

Enc. Submitted documents