



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2008

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR2008-08471

Dear Mr. Risley:

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# 315131.

The City of Victoria Police Department (the "department") received a request for use of force reports from January 1, 2007, to April 15, 2008. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 exception encompasses information made confidential by statute. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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). Section 58.007 is only applicable to records that pertain to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.*; *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Furthermore, 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 id.* § 51.02(2). The information submitted in incident report numbers 00002815, 00004542, and 00013868 pertain to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality in section 58.007 apply to this information. Therefore, we conclude that incident report numbers 00002815, 00004542, and 00013868, which we have marked, are confidential pursuant to section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, although you claim that the use of force reports related to incident report numbers 00002815, 00004542, and 00013868 are subject to section 58.007, upon review, we find that these documents are administrative records and are not juvenile law enforcement records. As such, these documents, which we have marked, may not be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 also encompasses section 261.201 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that submitted incident report number 00005192 was developed and used by the department in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code); *see also 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). You do not indicate 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, incident report number 00005192 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 incident report number 00005192, which we have marked, in its entirety from disclosure under section 552.101 of the Government Code as information made confidential by law. However, although you claim that the use of force report related to incident report number 00005192 is subject to section 261.201, upon review, we find that this report was not, in and of itself, used by the department in an investigation of child abuse or neglect but rather a use of force report. As such, this document, which we have marked, may not be withheld under section 552.101 in conjunction with section 261.201.

Section 552.101 also encompasses information protected by common-law privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest.¹ *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the work place, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that some of the information at issue, including information that identifies a juvenile offender in a use of force report, is protected under common-law privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. We therefore determine that the department must withhold the information we have marked pursuant to section 552.101 of the Government Code under common-law privacy.

The department also claims that the remaining submitted information is subject to section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

“[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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that section 552.108(a)(1) is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320, *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The remaining submitted information includes use of force reports, which are administrative records. Although we are cognizant of the fact that use of force investigations are based on an underlying arrest or detention, the focus of these investigations is on the propriety of an officer’s conduct, not the underlying arrests. You do not state, nor does it appear, that the use of force investigations in the remaining submitted information relate to criminal investigations into an officer’s conduct. Accordingly, we conclude that the department may not withhold the use of force reports, which we have marked, under section 552.108(a)(1).

You state that portions of the remaining submitted information pertain to pending criminal investigations and prosecutions. Based upon this representation, we find that the department has demonstrated the applicability of section 552.108(a)(1) to the remaining information. *See generally 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 arrest, an arrested person, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the remaining information, which we have marked, under section 552.108.

Finally, you state that a portion of the remaining submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. We have marked the Texas motor vehicle record information that the department must withhold under section 552.130 of the Government Code.

In summary: (1) the department must withhold incident report numbers 00002815, 00004542, and 00013868, which we have marked, in their entirety under section 552.101 of

the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the department must withhold incident report number 00005192, which we have marked, in its entirety from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) with the exception of basic information, the department may withhold the remaining submitted information we have marked under section 552.108 of the Government Code; (4) the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the department must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code. The remaining submitted 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 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). If the governmental body does not file suit over 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 challenge that decision by suing the governmental

²We note that the submitted information contains social security numbers. 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.

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 315131

Enc. Submitted documents

c: Ms. Leslie Wilber
311 East Constitution
Victoria, Texas 77901
(w/o enclosures)