



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2008

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541

OR2008-16700

Dear Ms. Mapes:

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# 329390 (Killeen Police Department request# 780).

The Killeen Police Department (the "department") received a request for incident reports and photos relating to police report numbers 08-009805 and 08-010648. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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.<sup>1</sup> This section encompasses information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Police report number 08-009805 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 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"), 261.001(1)(c) (definition of "child abuse" includes "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child"). You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that police report number 08-009805 is confidential pursuant to section 261.201 of the Family Code and excepted from disclosure under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the department must withhold police report number 08-009805 in its entirety under section 552.101 of the Government Code as information made confidential by law.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming 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 id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that police report number 08-010648 relates to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to this report.

However, we note, and you acknowledge, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See 531 S.W.2d at 186-87; see also ORD 127*. Thus, with the exception of basic information, which you state you have released, the department may withhold police report

number 08-010648 under section 552.108(a)(2) of the Government Code. We note you have the discretion to release all or part of police report number 08-010648 that is not otherwise confidential by law. Gov't Code § 552.007.

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 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,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen Hattaway  
Assistant Attorney General  
Open Records Division

keh/rsd/sdk

Ref: ID# 329390

Enc. Submitted documents

c: Requestor  
(w/o enclosures)