



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2009

Ms. Evelyn Njuguna
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 3682
Houston, Texas 77001-0368

OR2009-04498

Dear Ms. Njuguna:

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# 339032.

The Houston Police Department (the "department") received a request for incident reports for Beat 12D30 for a specified time period. You state that some responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses section 261.201 of the Family Code, which provides in relevant part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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, audiotapes, videotapes, 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). You state that the report you have marked as Exhibit 2 was developed or used in an investigation of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for the purposes of section 261.201); *see also id.* § 101.003(a) (defining “child” for the purposes of section 261.201). Based upon this representation and our review, we find that section 261.201 is applicable to this report. As you do not indicate that the department has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given this assumption, we conclude that Exhibit 2 is confidential under section 261.201 of the Family Code and must be withheld from disclosure in its entirety under section 552.101 of the Government Code.² *See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).*

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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). You state that the reports marked as Exhibit 5 each relate to cases that are inactive pending additional leads and which may be reactivated once additional leads are developed. However, we note that the statutes of limitations for the offenses in Exhibit 5 have expired. *See* Crim. Proc. Code art. 12.01 (listing time limits for presentation of felony indictments), .02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). Further, you do not explain how any of the reports in Exhibit 5 pertain to a pending criminal case. We therefore find you have failed to reasonably explain how release of Exhibit 5 would interfere with law enforcement. Accordingly, the department may not withhold Exhibit 5 pursuant to section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive with regard to Exhibit 2, we need not address your remaining arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if 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)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706. You state that the reports marked as Exhibits 3 and 4 each relate to cases which concluded with a result other than conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which must be released, Exhibits 3 and 4 may be withheld under section 552.108(a)(2).³

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130 (a)(1), (2). The department must withhold the information you have marked under section 552.130 of the Government Code.

You assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The department may withhold the social security numbers in the remaining information under section 552.147.⁴

In summary, Exhibit 2 is confidential under section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. With the

³As our ruling is dispositive with regard to Exhibits 3 and 4, we need not address your remaining argument against disclosure of this information.

⁴We note that 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.

exception of basic information, which must be released, the department may withhold Exhibits 3 and 4 under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code, and may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 339032

Enc. Submitted documents

c: Requestor
(w/o enclosures)