



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 4, 2009

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
600 North Bell Boulevard  
Cedar Park, Texas 78613

OR2009-15698

Dear Ms. Quinn:

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# 360615 (Cedar Park reference no. 09-334).

The City of Cedar Park (the "city") received a request for a specified police report. You claim 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You represent to us that the submitted police report was used or developed during an investigation of alleged child neglect. *See* Fam. Code § 261.001(4) (defining “neglect” for purposes of Fam. Code ch. 261). Based on your representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code. *See* Fam. Code § 261.201(a). In this instance, however, the requestor is the parent of two of the children listed in the report, and the requestor is not alleged to have committed the suspected neglect. As such, the submitted report may not be withheld from this requestor under section 261.201(a). Fam. Code § 261.201(k) (providing a child’s parent can obtain information that is subject to section 261.201(a) concerning reported abuse or neglect of the child as long as the parent is not alleged to have committed the abuse or neglect). We also note section 261.201(l) provides that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(l)(2). You assert

the submitted report is excepted from public disclosure under sections 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and sections 552.108 and 552.130 of the Government Code. Accordingly, we will consider your remaining arguments against disclosure.

Section 552.101 encompasses section 58.007 of the Family Code, which provides in pertinent part:

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find the submitted report does not involve a juvenile as a suspect, offender, or defendant. Therefore, you have failed to demonstrate that the submitted report is a juvenile law enforcement record for purposes of section 58.007. Accordingly, the submitted report may not be withheld under section 552.101.

Section 552.108(a)(2) 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 (Tex. 1977). You state, and provide a letter from the police department asserting, the submitted report pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on these representations and our review, we agree that the submitted report is subject to section 552.108(a)(2).

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). Basic information refers to the 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 *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the submitted report under section 552.108(a)(2) of the Government Code.<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

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](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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

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<sup>1</sup>In this instance, the requestor has a special right of access pursuant to section 261.201(k) of the Family Code to the information being released. If the city receives another request for this same information from an individual who does not have a right of access to the information, the city should resubmit the information to us and request another ruling. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 360615

Enc. Submitted documents

c: Requestor  
(w/o enclosures)