



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 16, 2010

Mr. Robert Massey  
Assistant City Attorney II  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2010-02229

Dear Mr. Massey:

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# 370294 (City ID# 315).

The Wichita Falls Police Department (the "department") received a request for two specified incident reports. You claim the submitted 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 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 information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the 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 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:

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

Fam. Code § 261.201(a), (k), (l). You claim the submitted information is confidential under section 261.201. Upon review of report number 09-111263, we find you have failed to demonstrate it constitutes a report of alleged or suspected child abuse or neglect made under chapter 261, or consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261. Accordingly, the department may not withhold report number 09-111263 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Report number 09-111329 and the submitted photographs pertain to assault and injury to a child offenses. *See id.* §§ 261.001(1) (definition of child abuse includes physical injury that results in substantial harm to the child), 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”); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Upon review, we find report number 09-111329 and the submitted photographs constitute a report of alleged or suspected child abuse made under chapter 261. We note the requestor is the mother of the alleged child victim of the assault in report number 09-111329 and she is not alleged to have committed the offense. Pursuant to section 261.201(k), the

department may not withhold report number 09-111329 from this requestor under section 261.201(a). However, section 261.201(l)(2) states 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). Thus, because you also assert the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code and section 552.108 of the Government Code, we will address your arguments under these exceptions for both report numbers 09-111263 and 09-111329.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). Law enforcement records relating to juvenile delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining "delinquent conduct" for purposes of title 3 of the Family Code). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Report number 09-111329 and the submitted photographs involve juveniles engaged in delinquent conduct. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Thus, report number 09-111329 and the submitted photographs are confidential pursuant to section 58.007(c) and must be withheld under section 552.101. You also seek to withhold report number 09-111263 under section 58.007. Report number 09-111263 pertains to an assault; however, we are unable to determine the ages of the offenders involved in the assault. Therefore, we must rule conditionally. To the extent report number 09-111263 concerns a juvenile suspect or offender who is ten years of age or older and under seventeen years of age, it is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government

Code. However, to the extent report number 09-111263 pertains to suspects or offenders who are not ten years of age or older and under seventeen years of age, it is not confidential under section 58.007, and the department may not withhold it under section 552.101. In that case, we will address your remaining arguments against disclosure of this report.

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). 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). You state report number 09-111263 relates to a pending criminal investigation. Based upon this representation and our review of the information at issue, we conclude the release of report number 09-111263 would interfere with the detection, investigation, or prosecution of a crime. *See 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, as you acknowledge, 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*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report number 09-111263 under section 552.108(a)(1).

In this instance, however, you seek to withhold portions of the basic information in report number 09-111263 under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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 workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Although you seek to withhold the narrative portion of report number 09-111263 under common-law privacy, we find you have failed to demonstrate how any portion of the

narrative contains information that is highly intimate or embarrassing. Accordingly, the department may not withhold any portion of the basic information of report number 09-111263 under section 552.101 on the basis of common-law privacy.

In summary, report number 09-111329 and the submitted photographs must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent report number 09-111263 pertains to a suspect or offender who was ten years of age or older and under seventeen years of age at the time of the offense, the department must withhold it under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent report number 09-111263 does not pertain to suspects or offenders who were ten years of age or older and under seventeen years of age at the time of the offense, the department may withhold it under section 552.108(a)(1) of the Government Code, except basic information must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 370294

Enc. Submitted documents

c: Requestor  
(w/o enclosures)