



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2010

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-04362

Dear Ms. Henry:

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# 374088.

The Plano Police Department (the "department") received a request for a specified police report. You claim that 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 public 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 protected by other statutes, such as 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 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 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:

(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). The submitted report consists of information used or developed in an investigation under chapter 261; therefore, the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *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). Thus, we find the submitted report is generally confidential under section 261.201 of the Family Code. However, the requestor is the father of the child victim listed in the report, and the requestor is not alleged to have committed the suspected abuse. In this instance, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting party’s identity under section 552.101 in conjunction with section 261.201(l)(3). In addition,

section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. The relevant language of section 58.007 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as the term is defined in Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for

supervision”). We find that the submitted report involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. We note that the requestor is the stepfather of the juvenile suspect listed in the report. If the requestor is not the juvenile suspect’s legal guardian, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 58.007 of the Family Code. If the requestor is the juvenile suspect’s legal guardian, the department may not withhold the submitted information from him under section 58.007(c). *Id.* § 58.007(e). However, before a parent or guardian may inspect juvenile records, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. Accordingly, if the requestor is the juvenile suspect’s legal guardian, we will address your remaining argument against disclosure.

You also raise section 552.108 of the Government Code, which provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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)(1)-(2). You appear to raise both of these provisions, which generally are applicable to mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal investigation or prosecution. Section 552.108(a)(2) is applicable only to information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information relates to a pending criminal investigation. You also state the release of this information would interfere with the detection, investigation, or prosecution of crime. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the information at issue. *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).

As you acknowledge, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, the department must release the types of basic information listed in *Houston Chronicle*.

See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identity of the complainant. In this instance, the listed complainant is also the reporting party for purposes of section 261.201 of the Family Code. Section 261.201(1)(3) states the reporting party's identity must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not the juvenile suspect's legal guardian, the department must withhold the submitted report in its entirety from the requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, if the requestor is the juvenile suspect's legal guardian, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.¹

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

¹Because the requestor may have a special right of access to the submitted information in this instance, the department must against seek a decision from this office if it receives another request for the same information from a different requestor.

Ref: ID# 374088

Enc. Submitted documents

c: Requestor
(w/o enclosures)