



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2010

Mr. Craig Magnuson
Attorney, City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063

OR2010-07765

Dear Mr. Magnuson:

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# 380819.

The Mansfield Police Department (the "department") received a request for any 9-1-1 calls placed to a specified address and any reports from the specified address in a specified time frame. You state you have released some information to the requestor. 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 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 part 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). Upon review, we find report number 10021813 pertains to an investigation of alleged or suspected child abuse and consists of files, reports, records, communications, and working papers used or developed in the investigation. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *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). Accordingly, we find report number 10021813 is generally

confidential under section 261.201 of the Family Code. We note, however, the requestor is the parent of the child victim listed in this information, and the parent is not alleged to have committed the suspected abuse or neglect. Therefore, the department may not withhold report number 10021813 from this requestor on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the identifying information of the reporting party in report number 10021813, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3). Further, 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). You raise sections 552.101 and 552.108 of the Government Code for this report as well as the remaining information. We note that section 552.1175 may be applicable to this information as well.¹ Accordingly, we will address the applicability these exceptions to the submitted information.

You also claim report number 10021813 is confidential under section 58.007 of the Family Code, which is also encompassed by section 552.101 of the Government Code. Section 58.007 provides, in relevant 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.

Id. § 58.007(c). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You assert that report number 10021813 consists

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

of juvenile law enforcement records subject to section 58.007 of the Family Code. However, upon review, we find that none of the submitted information pertains to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, we conclude you have failed to establish section 58.007(c) of the Family Code is applicable to any of the submitted information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Next, you assert report number 10021813 and the remaining information are excepted from disclosure under section 552.108 of the Government Code. 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.” 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 Gov’t Code* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to an open and active criminal investigation. Based on this representation and our review, we conclude that release the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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, 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*. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information pertaining to the incident at issue, the department may withhold the submitted information under section 552.108(a)(1).

Next, we note section 552.1175 of the Government Code may apply to portions of the basic information. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure or a county jailer as defined by section 1701.001 of the Occupations Code], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Id. § 552.1175(b). The remaining information includes information that pertains to an individual who appears to be a county jailer. Thus, to the extent this individual is a county jailer under section 1701.001 of the Occupations Code who elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. However, to the extent this individual is not a county jailer under section 1701.001 of the Occupations Code or does not elect to restrict public access to his information in accordance with section 552.1175(b), the department may not withhold the information at issue under section 552.1175.

In summary, with the exception of the basic information, the department may the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. To the extent that the individual whose information we have marked is a current or former county jailer who elects to restrict access to his information in accordance with section 552.1175(b), then the department must withhold the information we have marked under section 552.1175 of the Government Code.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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²We note that because the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

Ref: ID# 380819

Enc. Submitted documents

cc: Requestor
(w/o enclosures)