



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Ms. Jamie S. French
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205

OR2010-09896

Dear Ms. French:

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# 385519.

The Schertz Police Department (the "department"), which you represent, received a request for the incident report related to case number 2009-57409, as well as the incident report, 9-1-1 call recording, and photographs related to case number 2010-12774. You have released a portion of the incident report pertaining to case number 2010-12774 to the requestor. 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 protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. Fam. Code § 58.007. Both case numbers 2009-57409 and 2010-12774 involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Therefore, section 58.007 is applicable to the submitted information. However, as you acknowledge, the requestor in this instance is the mother of the juvenile offender in both cases. Pursuant to section 58.007(e), a governmental body may not

withhold a child's law enforcement records from a parent under section 58.007(c). *Id.* § 58.007(e). Consequently, the submitted information may not be withheld from this requestor under section 58.007. However, pursuant to section 58.007(j), a governmental body may raise other exceptions to disclosure. *Id.* § 58.007(j)(2). Thus, we will address your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides in part:

(a) Except as provided by Section 261.203, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas 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.

Fam. Code § 261.201(a), (k). The report pertaining to case number 2009-57409 reflects it was used or developed in an investigation of alleged child abuse and of alleged child neglect. *See id.* §§ 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); 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). Therefore, we find this report is generally confidential under section 261.201 of the Family Code. Although the requestor is the parent

of the child victim listed in the report, the report also reflects the requestor was suspected of committing the alleged neglect; we therefore find the requestor does not have a right of access to this report under section 261.201(k). *See id.* § 261.201(k). Accordingly, as you do not inform us that the department has adopted a rule that governs the release of this type of information, the department must withhold the submitted report pertaining to case number 2009-57409 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

You claim the remaining report, photographs, and 9-1-1 call recording pertaining to case number 2010-12774 are excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 case number 2010-12774 is currently pending prosecution in juvenile probation court. Based on this representation and our review, we determine section 552.108(a)(1) is applicable to the remaining 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).

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*, and includes, among other things, the identity of the complainant and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the information you have identified as having been released to the requestor does not contain sufficient information to qualify as a detailed description of the offense and does not include the complainant’s identity. Accordingly, with the exception of basic information, which must include a sufficient portion of the narrative to encompass a detailed description of the offense and the identifying information of the complainant, the department may withhold the report, photographs, and 9-1-1 call recording pertaining to case number 2010-12774 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the report pertaining to case number 2009-57409 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information which must be released, the

¹As our ruling is dispositive for this report, we need not address your remaining argument against its disclosure.

department may withhold the remaining information, which pertains to case number 2010-12774, under section 552.108(a)(1) 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 385519

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note because this requestor has a special right of access to basic information being released that would ordinarily be confidential, the department must again seek a decision from this office if it receives another request for the same information from another requestor.