



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2010

Mr. Richard L. Bilbie  
Assistant City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

OR2010-09995

Dear Mr. Bilbie:

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# 385670.

The Harlingen Police Department (the "department") received a request for records pertaining to four specified case numbers. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

§ 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code.<sup>2</sup> Section 261.201 provides in relevant part:

(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.

Fam. Code § 261.201(a). Upon review, we agree that the information related to case numbers 98-51793, 98-51795, and 98-52470 was used or developed in an investigation of child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *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). You do not inform us the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given this assumption, we find that the information related to case numbers 98-51793, 98-51795, and 98-52470, which we have marked, is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201). We note that the requestor agreed to the redaction of information that identifies juveniles, to the extent such information is confidential. The information we have marked, however, is confidential by law and must be withheld in its entirety. Nevertheless, we note the remaining information pertains to an assault involving two adults. You do not explain, nor can we discern from our review, that the remaining information constitutes a report of alleged or suspected abuse or neglect made under chapter 261 or that this information was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.201. Consequently, the department may not withhold the remaining information on the basis of section 261.201 in conjunction with section 552.101.

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<sup>2</sup>Although you raise section 552.101 in conjunction with section 261.203(a) of the Family Code, based on your arguments, we understand you to raise section 552.101 in conjunction with section 261.201(a) of the Family Code.

<sup>3</sup>As our ruling is dispositive of this information, we need not address your arguments against its disclosure.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007, 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.

*Id.* § 58.007(c). For purposes of section 58.007, a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Upon review, we find that the remaining information does not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, we conclude you have not demonstrated the applicability of section 58.007(c) of the Family Code to the information at issue. Consequently, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered highly intimate or 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. Upon review, we find that none of the remaining information is highly intimate or embarrassing, and it may not be withheld on the basis of common-law privacy.

Based on your arguments, we understand you to raise section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Pruitt*, 551 S.W.2d 706). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert that "release of the information would reveal procedures and techniques of the [department] for investigations of cases involving children that concern intimate matters." You state that "release of the information [at issue] would reveal internal police investigative records." Upon review, we find you have failed to establish how public access to the remaining information would interfere with law enforcement. Accordingly, the department may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released to the requestor.

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 385670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)