



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2010

Mr. Charles Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-14844

Dear Mr. Weir:

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# 395224 (COSA File No. 2010-6234).

The City of San Antonio (the "city") received a request for report numbers 00334061 and 00335046. 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 information protected by other statutes, such as 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, the relevant language of which 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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by 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 a 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:

....

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

Fam. Code § 58.007(c), (e), (j)(2). 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 at the time of the reported conduct. *See id.* § 51.02(2)(A). You raise section 58.007 for report number 00334061. Upon review, we agree report number 00334061 constitutes law enforcement records relating to conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(b) (defining "conduct indicating need for supervision" for purposes of section 58.007). Therefore, report number 00334061 is within the scope of section 58.007(c). However, the requestor may be the legal representative of the juvenile who is the subject of the report, the juvenile's parents, or the juvenile's guardians. Thus, if the requestor is not the legal representative of a party who has access under section 58.007(e), then report number 00334061 must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. However, if the

requestor is the legal representative of a party listed in section 58.007(e), he may inspect or copy any law enforcement records concerning the juvenile at issue. *Id.* § 58.007(e). Nevertheless, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Because you assert the information at issue is subject to section 552.108, we will consider the applicability of this exception to the information at issue. However, before we address your claim under section 552.108 for report number 00334061, we will address your claim under section 552.101 for report number 00335046.

You claim report number 00335046 is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 of the Family Code provides 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 [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.

(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.

*Id.* § 261.201(a), (k), (l). Upon review, we agree report number 00335046 was used or developed in an investigation of alleged child abuse. *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). Therefore, we find this report is generally confidential under section 261.201 of the Family Code. However, as previously mentioned, the requestor may be the legal representative of the child victim who is the subject of the report, the child victim’s parents, or the child victim’s guardians, none of whom are alleged to have committed the suspected abuse. If the requestor is not the legal representative of a party who has access under section 261.201(k), then this report must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the requestor is the legal representative of a party who has access under section 261.201(k), the city may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). In that instance, section 261.201(1)(2) provides that any information subject to section 261.201(k) that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). You assert report number 00335046 is excepted from public disclosure under section 552.108 of the Government Code. Therefore, in accordance with section 261.201(1)(2) of the Family Code, we will consider your argument under section 552.108 for 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). 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 numbers 00334061 and 00335046 pertain to an open criminal case. Further, you state release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, based on your representations and our review, we agree section 552.108(a)(1) is generally applicable to the information at issue. *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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle* and includes the identity of the complainant. *See* 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*). Accordingly, if the requestor is the legal representative of a party who has access to the reports at issue, then, with the exception of basic information, the city may withhold report numbers 00334061 and 00335046 under section 552.108(a)(1) of the Government Code.

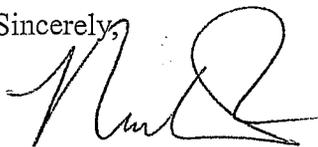
In summary, if the requestor is not the legal representative of the juvenile at issue in report number 00334061, the juvenile’s parents, or the juvenile’s guardians, then the city must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is not legal representative of the child victim at issue in report number 00335046, the child victim’s parents, or the child victim’s guardians, then the city must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the requestor is the legal representative of a party who has access under section 58.007(e) to report number 00334061, or is the legal representative of a party who has access under section 261.201(k) to report number 00335046, then with the exception of basic information that must be released from each report, the city may withhold those reports under section 552.108(a)(1) of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over the word 'Sincerely,'.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 395224

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)