



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-15725

Dear Mr. Alicie

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# 397049.

The Baytown Police Department (the "department") received three requests from the same requestor for information relating to three specified incidents. You state that social security numbers will be redacted from the responsive information pursuant to section 552.147 of the Government Code.¹ You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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. This exception encompasses information other statutes make confidential. You claim that portions of report numbers 2008-54719 and 2009-16058 are confidential under section 261.201 of the Family Code, which provides in part:

¹We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Having reviewed report numbers 2008-54719 and 2009-16058, we find that none of the information in question constitutes a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code. *See id.* § 261.201(a)(1). We also find that none of the information in question was used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation under chapter 261. *See id.* § 261.201(a)(2). Thus, we conclude that none of the information in report numbers 2008-54719 and 2009-16058 is confidential under section 261.201 of the Family Code, and therefore none of the information in question may be withheld on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in 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.

...

(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:

(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.

Id. § 58.007(c), (e), (j); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

We find that report number 2008-54719 involves juvenile offenders, so as to fall within the scope of section 58.007(c). Although the report indicates that one of the juveniles is now deceased, section 58.007 is not solely intended to protect the privacy interests of juveniles. Therefore, the juvenile's death does not remove information relating to the deceased juvenile from the ambit of section 58.007(c). Thus, report number 2008-54719 is generally confidential under section 58.007(c) of the Family Code.

In this instance, however, the requestor identifies herself as a parent of one of the juvenile offenders involved in the report. As such, the requestor has a right to inspect juvenile law enforcement records concerning her child, pursuant to section 58.007(e). *See id.* § 58.007(e). Section 58.007(j)(1) provides, however, that any personally identifiable information concerning the other juvenile offenders must be redacted. *See id.* § 58.007(j)(1). We have marked the information in report number 2008-54719 that identifies the other juvenile

offenders. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information in report number 2008-54719 must be released to this requestor pursuant to section 58.007(e).

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the information you have marked in report number 2010-1009 would interfere with a pending criminal investigation. Based on your representation, we conclude that the department may withhold the marked information under section 552.108(a)(1) of the Government Code.² *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).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(2). The department must withhold the Texas motor vehicle information you have marked in the remaining portions of report number 2010-1009, along with the Texas motor vehicle information we have marked in that report, under section 552.130 of the Government Code.³

In summary: (1) the department must withhold the information we have marked in report number 2008-54719 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code; (2) the department may withhold the information you have marked in report number 2010-1009 under section 552.108(a)(1) of the Government Code; and (3) the department must withhold the Texas motor vehicle information you have marked in the remaining portions of report number 2010-1009, along with the Texas motor vehicle information we have marked in that report, under

²As we are able to make this determination, we need not address your claims under sections 552.130 and 552.136 of the Government Code for some of the marked information.

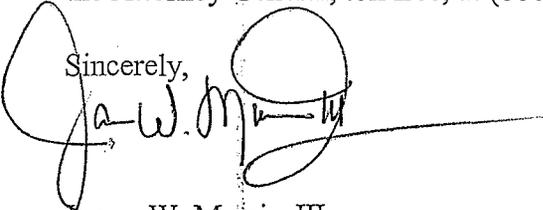
³We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

section 552.130 of the Government Code. The rest of the submitted information must be released.⁴

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 397049

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that the requestor has a right of access under section 58.007(e) of the Family Code to information relating to her child that the department would ordinarily be required to withhold under section 552.101 of the Government Code in conjunction with section 58.007(c). Additionally, report number 2009-16058 contains information relating to the requestor's child that the department would ordinarily be required to withhold under section 552.101 in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In this instance, however, the requestor also has a right to that information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the department receive another request for these same records from a requestor who would not have the present requestor's rights of access, the department should resubmit these records and request another decision. *See Gov't Code* §§ 552.301(a), .302.