



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

Mr. Ngheim V. Doan
Deputy City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2010-16049

Dear Mr. Doan:

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# 397711.

The City of Pearland (the "city") received a request for information pertaining to a specified address during a specified time period and all records pertaining to a named individual. You state the city has released some of the requested information. 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 representative sample of information.¹

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 other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part as follows:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). You state, and the submitted information reflects, that the report in Exhibit D was used by the city's police department 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 section 261.201 as person under 18 years of age who has not been married or had the disabilities of minority removed for general purposes). Therefore, we agree Exhibit D is generally confidential under section 261.201 of the Family Code. However, we note the requestor is the stepmother of one of the child victims in this report, and she is not alleged to have committed the suspected abuse. Accordingly, if the requestor is not her stepson’s parent, managing conservator, or legal representative, then this report must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. On the other hand, if the requestor is the child’s parent, managing conservator, or legal representative, the city may not use section 261.201(a) to withhold Exhibit D from this requestor. *Id.* § 261.201(k). However, in that instance, the city must withhold the identifying information of the other juvenile victim listed in the report, which we have marked, pursuant to section 261.201(l)(1). Moreover, section 261.201(l)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). We note a portion of Exhibit D is excepted from public disclosure under section 552.130 of the Government Code.² Therefore, in accordance with section 261.201(l)(2), we consider the applicability of section 552.130 to Exhibit D.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We have marked a Texas driver’s license number in Exhibit D. Thus, if the requestor is the parent, managing conservator, or legal representative of her stepson, then the city must withhold the driver’s license number we have marked under section 552.130 of the Government Code.³

We note 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, 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,

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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). We find the report in Exhibit C constitutes a law enforcement record relating to juvenile delinquent conduct or conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of Fam. Code tit. 3). Therefore, we conclude Exhibit C falls within the scope of section 58.007(c). However, we note the requestor is the stepmother of the juvenile who is the subject of this report. Thus, if the requestor is not the parent or legal guardian of her stepson, then Exhibit C must be withheld in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. On the other hand, to the extent the requestor is her

stepson's parent or legal guardian, the city may not withhold Exhibit C from the requestor on the basis of section 58.007(c). *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). Therefore, because you assert Exhibit C is subject to section 552.108 of the Government Code, we will consider the applicability of section 552.108 exception for that report, as well as the report in Exhibit B.

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits B and C pertain to closed criminal investigations that did not result in a conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is generally applicable to Exhibits B and C.

We note section 552.108 does not except from public 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 Publishing 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), and includes a detailed description of the offense. Therefore, if the requestor is the parent or guardian of the juvenile offender in Exhibit C, then with the exception of basic information, the city may withhold report number 10005070 under section 552.108(a)(2) of the Government Code. With the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2).

In summary, if the requestor is not the parent, managing conservator, or legal representative of her stepson listed in Exhibit D, then the city must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is the parent, managing conservator, or legal representative of her stepson in Exhibit D, then the city must withhold the other child victim's identifying information we have marked pursuant to section 261.201(l)(1) of the Family Code and the Texas the driver's license number we have marked under section 552.130 of Government Code, and release the remainder of Exhibit D to this requestor. If the requestor is not the parent or guardian of her stepson in Exhibit C, then the city must withhold Exhibit C in its entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. If the requestor is the parent or guardian of her stepson in Exhibit C, then with the exception of basic information, the city may withhold Exhibit C under section 552.108(a)(2) of the Government Code. With the exception of basic information, the city may withhold Exhibit B under section 552.108(a)(2). The remaining information must be released.

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 McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 397711

Enc. Submitted documents

c: Requestor
(w/o enclosures)