



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2010

Mr. David A. Mendoza  
Assistant District Attorney  
Hays County  
110 East Martin Luther King Drive  
San Marcos, Texas 78666

OR2010-16396

Dear Mr. Mendoza:

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#398289.

The Hays County District Attorney's Office (the "district attorney") received a request for twenty-four specified incident reports. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part as follows:

---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, we find report number C05-01312 involves juvenile delinquent conduct occurring after September 1, 1997 and is therefore subject to section 58.007. None of the exceptions in section 58.007 appear to apply; therefore, report number C05-01312 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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.

Fam. Code § 261.201(a), (k), (l). Upon review, we find report numbers C09-40492 and C10-27723 pertain to investigations of alleged child abuse or neglect. *See id.* § 261.001(1)(A), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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). We note, however, the requestor is the parent of the child victims listed in both reports. With respect to report number C10-27723, the requestor is alleged to have committed the alleged or suspected abuse; thus, the requestor does not have a right of access to report number C10-27723 under section 261.201(k). You have not indicated that the district attorney has adopted a rule governing the release of this type of information; thus, we assume no such rule exists. Given that assumption, we conclude the district attorney must withhold report number C10-27723 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (construing statutory predecessor to section 261.201) We note, however, the requestor is not alleged to have committed the

suspected abuse in report number C09-40492. Thus, section 261.201(a) may not be used to withhold report number C09-40492 from this requestor. *Id.* § 261.201(k). We note that section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). We also note that section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your arguments under section 552.108 of the Government Code for the remaining information, including report number C09-40492.

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: (1) 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(a) 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to ongoing criminal investigations and that release of this information would interfere with law enforcement efforts. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to report numbers C09-40492, C10-27667, C10-20394, C10-19125, C10-19101, C10-02089, C09-46766, C09-45515, C09-44362, C09-39795, C09-36313, and C09-15301. However, you have failed to demonstrate how release of report numbers 08-15301, 07-34945, 05-32777, 05-01809, and 05-01605, which pertain to calls for service with no criminal offenses listed, would interfere with the detection, investigation, or prosecution of a specific crime. Further, we note that report numbers 08-14711, 07-05878, 07-05854, and 05-09349 pertain to alleged misdemeanor offenses. *See* Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). More than two years have elapsed since the events giving rise to report numbers 08-14711, 07-05878, 07-05854, 05-09349, and you have not informed this office any criminal charges were filed within the limitations periods. Additionally, we note report numbers 00-26038 and 00-24710 involve alleged felonies. The maximum statute of limitations for the offenses listed in these reports is seven years. *See* Crim. Proc. Code art. 12.01(3)(F) (felony indictment for credit card abuse under section 32.31 of the Penal Code must be presented within seven years from date of offense); Crim. Proc. Code art. 12.01(4) (felony indictment for theft must be presented within five years from date of offense). More than seven years have elapsed since the events giving rise to the investigations in report numbers 00-26038 and 00-24710, and you have not informed this office any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of these remaining reports would interfere with the detection, investigation, or prosecution of crime. Consequently, the district attorney may not withhold any portion of the remaining information under section 552.108(a)(1).

Section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The district attorney must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the district attorney may withhold report numbers C09-40492, C10-27667, C10-20394, C10-19125, C10-19101, C10-02089, C09-46766, C09-45515, C09-44362, C09-39795, C09-36313, and C09-15301 pursuant to section 552.108 of the Government Code. However, in releasing the basic information for report number C09-40492, the district attorney must withhold the reporting party’s identifying information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a). The district attorney must, therefore, withhold the Texas license plate number we have marked in report number C07-05878 under section 552.130 of the Government Code.

Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). The district attorney must, therefore, withhold the credit card number we have marked under section 552.136 of the Government Code.<sup>2</sup>

In summary, the district attorney must withhold report number C05-01312 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The district attorney must withhold report number C10-27723 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information the district attorney may withhold report numbers C09-40492, C10-27667, C10-20394, C10-19125, C10-19101, C10-02089,

---

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

C09-46766, C09-45515, C09-44362, C09-39795, C09-36313, and C09-15301 under section 552.108(a)(1) of the Government Code. However, in releasing the basic information for report number C09-40492 the district attorney must withhold the reporting party's identifying information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The district attorney must withhold the Texas license plate number we have marked under section 552.130 of the Government Code. The district attorney must withhold the credit card number we have marked under section 552.136 of the Government Code. 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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 398289

Enc. Submitted documents

c: Requestor  
(w/o enclosures)