



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2011

Mr. Colin A. Hoffman
Paralegal
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283

OR2011-02503

Dear Mr. Hoffman:

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# 409661 (San Antonio ORR 2010-7117).

The San Antonio Police Department (the "department") received a request for ninety-two case records related to a specified address. 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 claimed exceptions and reviewed the submitted information.

Initially, we note you have only submitted information responsive to seventy-four cases. To the extent information regarding the remaining eighteen cases existed on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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

(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 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). Exhibit I consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We also note that case number 80109383 in Exhibit IV, which we have marked, consists of information developed in an investigation of alleged injury to a child. Therefore, this information is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that Exhibit I and case number 80109383 in Exhibit IV are confidential pursuant to section 261.201 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which protects juvenile law enforcement records. This section provides, in relevant 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.

Fam. Code § 58.007(c). 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. *See id.* § 51.02(2). Section 58.007(c) applies to information that relates to a juvenile as a suspect or offender, but not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c). You contend that the reports in Exhibit III are excepted from disclosure because they each involve juvenile suspects. Upon review, we agree that case numbers 00015067 and 70952254 involve juveniles engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of section 58.007 as "conduct, other than a traffic offense, that violates a penal law of this state . . . punishable by imprisonment or by confinement in jail"). It does not appear that any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(i). Therefore, those two reports are confidential and must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the suspects in case number 00136887 are listed as "unknown," and thus the report does not identify a juvenile as a suspect or offender for the purposes of section 58.007. Therefore, we conclude you have not established that section 58.007(c) of the Family Code applies to this report, and it may not be withheld on that basis. As you have raised no further exceptions for case number 00136887, it must be released.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). You assert that case number 80682171 in Exhibit II relates to a sexual assault investigation and should be withheld. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold the entire report, you have not demonstrated, nor does the information reflect, that the requestor knows the identity of the alleged sexual assault victim. Thus, the department may not withhold the entire report under common-law privacy. However, we find that the alleged victim's identifying information is highly intimate or embarrassing information of no legitimate public interest. Therefore, the department must withhold the

information we have marked in case number 80682171 in Exhibit II under section 552.101 in conjunction with common-law privacy.

You next assert that case number 80742467 in Exhibit II contains health information also protected by common-law privacy. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing information of no legitimate public interest. Therefore, the department must withhold the information we have marked in case number 80742467 in Exhibit II under section 552.101 in conjunction with common-law privacy.

Finally, you assert that the remaining information in Exhibit IV is excepted from disclosure by section 552.108 of the Government Code. Section 552.108(a)(1) provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(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 records in Exhibit IV pertain to open criminal investigations. Based on your representation and our review, we find that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree that section 552.108(a)(1) applies to the remaining information in Exhibit IV.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177 at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information,

the department may withhold the remaining information in Exhibit IV under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold Exhibit I and case number 80108383 in Exhibit IV under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold case numbers 00015067 and 70952254 in Exhibit III under section 552.101 in conjunction with section 58.007 of the Family Code. The department must withhold the information we have marked in Exhibit II under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold the remaining information in Exhibit IV under section 552.108. 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eég

Ref: ID # 409661

Enc. Submitted documents

c: Requestor
(w/o enclosures)