



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Captain Greg Minton
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2011-06234

Dear Captain Minton:

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# 416757.

The Leander Police Department (the "department") received a request for the basic information for all incident reports that were generated from calls for service during a specified time period. You state the department has released some of the requested information. Additionally, you state you advised the requestor of certain redactions made pursuant to section 552.1175(h) of the Government Code. We note, however, section 552.1175(h) pertains only to notifying a requestor of redacting information pursuant to sections 552.1175(b) and 552.1175(f) of the Government Code, not to redacting information under other exceptions in the Act. You claim the remaining requested 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.

Initially, we note some of the submitted information is not responsive to the request. The requestor seeks "[t]he basic information" for the incident reports at issue.¹ Thus, any information outside the scope of basic information is not responsive to the request. This

¹Basic 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).

ruling does not address the public availability of that information, and the department need not release any non-responsive 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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). 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). Report numbers LPD110264 and LPD110267 involve juveniles engaged in delinquent conduct that occurred after September 1, 1997. As such, these reports constitute juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear any of the exceptions to confidentiality under section 58.007 apply to any of the reports at issue. Accordingly, the department must withhold the responsive information for these two reports under section 552.101 in conjunction with section 58.007. However, none of the remaining responsive information involves a juvenile engaging in delinquent conduct or conduct indicating a need for supervision. Consequently, none of the remaining information may be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we agree report number LPD110237 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of Penal Code section 21.11 as a person younger than 17 years of age). You do not indicate the department has adopted rules governing the release of this type of information in this instance; therefore, we assume no such regulations exist. Given that assumption, the department must withhold the responsive information in report number LPD110237 under section 552.101 in conjunction with section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(1) of the Government Code exempts 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 section 552.108 is applicable to the remaining responsive information. However, as previously noted, the requestor seeks access to only “[t]he basic information” from the reports. 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*. 531 S.W.2d 177. Basic information includes, but is not limited to, an identification of the complainant; the vehicles, property and premises involved; the location of the crime; a detailed description of the offense; and the names of the arresting and investigating officers but does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Open Records Decision No. 127 at 4-5 (1976). Consequently, the department may not withhold any of the remaining responsive information under section 552.108(a)(1).

In summary, the department must withhold the responsive information in report numbers LPD110264 and LPD110267 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the responsive information in LPD110237 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must release the remaining responsive information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 416757

Enc. Submitted documents

c: Requestor
(w/o enclosures)