



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hagar & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-06485

Dear Mr. Gorfida:

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# 417207.

The City of Sachse (the "city"), which you represent, received a request for all reports for a specified address during a specified time period. 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 information.

Initially, we note one of the submitted reports is subject to section 261.201 of the Family Code.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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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

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 department 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.

Fam. Code § 261.201(a), (k). Because incident report number 0801602 pertains to an investigation of alleged or suspected child abuse or neglect, we agree the information is within the scope of section 261.201 of the Family Code. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we determine the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). In this instance, we note the requestor is the father of the child victim for this report. However, the report indicates the father is the individual alleged to have committed the alleged or suspected abuse or neglect; thus, the requestor does not have a right of access under section 261.201(k). *See id.* § 261.201(k). Accordingly, the city must withhold incident report number 0801602 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in pertinent part as follows:

²As our ruling is dispositive, we need not address the city’s argument for this information.

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(1)-(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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). Upon our review, we find call for service numbers 200820956, 200821152, 200911846, and 201006995 do not

identify any juvenile suspects or offenders for the purposes of section 58.007. As such, section 58.007 is not applicable and the city may not withhold these reports on this basis.

We find call for service numbers 200807027, 200820049, 200820074, 200821163, 200901352, and 200919415, and incident report numbers 0802159, 0802284, 0900132, 0900884, and 0901775 consist of law enforcement records that involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, these reports are subject to section 58.007(c). However, in this instance, the requestor is the father of the juvenile suspect in call for service numbers 200807027, 200820049, 200820074, 200821163, and 200901352, and incident report numbers 0802159, 0802284, 0900132, and 0900884. Section 58.007(e) allows the requestor access to his child's juvenile law enforcement records. *Id.* § 58.007(e). Section 58.007(j)(1), however, provides that any personally identifiable information about a juvenile who is not the requestor's child must be redacted; thus, the city must withhold the information we have marked in incident report numbers 0802159 and 0900884. *See id.* § 58.007(j)(1). Furthermore, 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). Thus, we will consider the city's remaining argument.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that call for service numbers 200613171, 200800038, 200820956, and 20091352, and incident report numbers 0802284 and 0900884 pertain to criminal cases that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

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 Publishing Co. v. City of Houston*, and includes, among other things, a detailed description of the offense. 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). However, in releasing the detailed description of the offense, section 58.007(j)(1) of the Family Code requires the city to withhold the identity of a juvenile who is not the requestor's child, which we have marked in incident report numbers 0802159 and 0900884. Thus, with the exception of basic

information, the city may withhold call for service numbers 200613171, 200800038, 200820956, and 200901352, and incident report numbers 0802284 and 0900884 based on section 552.108(a)(2) of the Government Code.

We note the city has redacted portions of information from call for service number 201101629 under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).³ Section 552.130 provides 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). However, we note the information you have redacted is not subject to Open Records Decision No. 684 and may not be redacted without requesting an attorney general decision. Upon review, we find the city must withhold the information we have marked in call for service number 201101629 and incident report number 0900884 under section 552.130.

In summary: (1) the city must withhold incident report number 0801602 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the city must withhold call for service number 200919415 and incident report number 0901775 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (3) with the exception of basic information, the city may withhold call for service numbers 200613171, 200800038, 200820956, and 200901352, and incident report numbers 0802284 and 0900884 based on section 552.108(a)(2) of the Government Code; (4) the city must withhold the information we have marked in incident report numbers 0802159 and 0900884 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code; and (5) the city must withhold the information we have marked in call for service number 201101629 and incident report number 0900884 under section 552.130 of the Government Code. The city must release the remaining information.⁴

³Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the requestor has a right of access to some of the information being released, which is confidential with respect to the general public. *See* Fam. Code. § 58.007(e); Gov't Code §§ 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests), .130; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 417207

Enc. Submitted documents

c: Requestor
(w/o enclosures)