



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2011

Mr. Jose Hernandez
Interim Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2011-07073

Dear Mr. Hernandez:

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# 418111 (Edinburg Reference# 19516).

The Edinburg Police Department (the "department") received a request for information related to a specified incident. You claim 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."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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

¹The 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).

(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.

(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 Chapter 552, Government Code, 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 the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note, however, the requestor in this case is identified as the parent of one of the child victims named in the report, and the requestor is not accused of having committed the abuse. Accordingly, the department may not withhold from this requestor information concerning the alleged abuse or neglect that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nonetheless, the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2).

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides:

(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 Chapter 552, Government Code, or other law.

Id. § 58.007(c). *See also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age). We find the submitted report involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03

(defining “delinquent conduct” for purposes of Fam. Code § 58.007). However, as the child suspect’s step-father, the requestor might have a right of access to information otherwise made confidential by section 58.007(c). *See id.* § 58.007(e) (law enforcement records may be inspected by child’s guardian). As we are unable to determine whether the requestor is the child suspect’s guardian, we must rule conditionally. If the department determines the requestor is not a guardian of the child suspect, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. In this situation, we note that basic information is not released when information is being withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the department determines the requestor is a guardian of the child suspect, the department may not withhold these records from the requestor on the basis of section 58.007(c). Nonetheless, before the requestor inspects or copies these records, the department must redact any personally identifiable information about a juvenile victim or witness who is not the child. *See id.* § 58.007(j)(1). The department also must redact any information that is excepted from required disclosure under the Act. *See id.* § 58.007(j)(2). As you claim section 552.108 of the Government Code, we will consider its applicability to the information at issue.

Section 552.108(a)(1) excepts 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 the information at issue relates to a pending prosecution with the Hidalgo County District Attorney’s Office. Based on your representation and our review, we conclude that release of this information 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) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

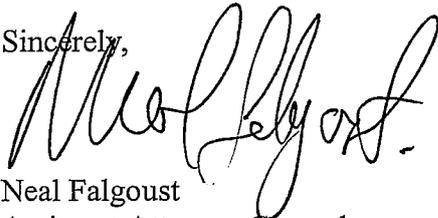
However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186–87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. Consequently, the information being released does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released as basic information. *See* ORD 127. Accordingly, you must release a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.

In summary, if the department determines the requestor is not a guardian of the child suspect named in the report, the department must withhold the report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is a guardian of the child suspect named in the report, the department must withhold any personally identifiable information about a juvenile victim or witness who is not the child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 418111

Enc. Submitted documents

c: Requestor
(w/o enclosures)