



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 14, 2011

Mr. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2011-08436

Dear Mr. Ray:

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# 420419.

The Longview Police Department (the "department") received a request for police report numbers 10-6692 and 11-4175. You claim the submitted reports are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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.

...

(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.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(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(a) (defining "delinquent conduct"). You raise section 58.007 for report numbers 10-6692 and 11-4175. These reports were created after September 1, 1997, and concern a child who was arrested for or suspected of assaulting her father when she was fourteen and fifteen-years-old. Thus, we agree the reports are subject to section 58.007. You inform us, however, the requestor may be the authorized representative of the child's guardian. Therefore, the requestor may have a right of access to the reports pursuant to section 58.007(e). If the requestor's client is not the child's guardian, then report numbers 10-6692 and 11-4175 must be withheld in their entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the requestor's client is the child's guardian, then pursuant to section 58.007(e), the department may not withhold the reports from him under section 58.007(c). *See id.* § 58.007(e). However, section 58.007(j)(2) protects information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). We will therefore

address your arguments that report number 11-4175 is excepted under section 552.101 in conjunction with section 261.201 of the Family Code, and sections 552.103 and 552.108 of the Government Code. We will also address your claims for the marked information in report number 10-6692 under sections 552.130 and 552.147 of the Government Code.

You assert report number 11-4175 is also protected by section 261.201 of the Family Code. Section 552.101 also encompasses section 261.201, which provides in relevant part:

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (l)(2). You represent the report was used or developed in the department's investigation of the alleged assault of the child. *See id.* §§ 261.001(1)(C) (definition of child abuse includes "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child"), 101.003(a) (defining "child" as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Accordingly, we find the report is subject to section 261.201. You represent, and provide documentation showing, the department's policy governing the release of information related to child abuse cases does not authorize the release of the report in this instance. However, as noted above, the requestor may represent the child's guardian. Thus, unless the requestor's client is alleged to have committed the abuse, pursuant to section 261.201(k), the report may not be withheld from him under section 261.201(a). *See id.* § 261.201(k). If the requestor's client is alleged to have committed the abuse, then the department must withhold report number 11-4175 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor's client is not alleged to have committed the abuse, we will address your section 552.108 claim for the marked portions of report number 11-4175. *See id.* § 261.201(l)(2).

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report pertains to an incident for which the statute of limitations has not yet expired. You also state the incident may be investigated further by the department or prosecuted in the future by the local district attorney. Based on your representations and our review, we conclude the release of the marked information would interfere with the detection, investigation, or prosecution of this 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). Thus, the department may withhold the marked portions of the report under section 552.108(a)(1) of the Government Code.¹

Finally, the department marked information in report number 10-6692 under sections 552.130 and 552.147 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

by a Texas agency. *See* Gov't Code § 552.130(a)(1). Therefore, the marked Texas driver's license number in report number 10-6692 is confidential under section 552.130. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, section 552.147 is applicable to the marked social security number. We note, however, sections 552.130 and 552.147 protect personal privacy. In this instance, the requestor may be the authorized representative of the individual whose information you marked. Because the requestor may be the individual's authorized representative, he may have a right of access to his client's private information under section 552.023 of the Government Code. *See id.* § 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, if the requestor is not the authorized representative of the individual whose information you marked in report number 10-6692, the department must withhold the marked information under section 552.130 of the Government Code. The department may also withhold the marked social security number pursuant to section 552.147 of the Government Code. If the requestor does represent the individual, the marked information in report number 10-6692 may not be withheld under sections 552.130 and 552.147.

In summary, if the requestor is not the authorized representative of the guardian of the child listed in report numbers 10-6692 and 11-4175, the reports must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor does represent the child's guardian, the department may not withhold the reports from him under section 58.007(c). If the requestor's client is alleged to have committed the abuse alleged in report number 11-4175, the department must withhold the report under section 552.101 in conjunction with section 261.201(a) of the Family Code. If the requestor's client is not alleged to have committed the abuse, the department may not withhold report number 11-4175 from the requestor under section 261.201(a). However, the department may withhold the marked portions of report number 11-4175 under section 552.108(a)(1) of the Government Code. Finally, if the requestor has a right of access to report number 10-6692 pursuant to section 58.007(e) of the Family Code but does not represent the individual whose information you marked, the department must withhold the driver's license number under section 552.130 of the Government Code. The department may also withhold the marked social security number pursuant to section 552.147 of the Government Code. If the requestor does represent the individual, the driver's license number and social security number 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 420419

Enc. Submitted documents

c: Requestor
(w/o enclosures)