



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2011

Chief James S. Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2011-11254

Dear Chief Kelley:

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# 425958.

The Sweetwater Police Department (the “department”) received a request for any incident reports pertaining to two named individuals at a specified address during a specified month. You claim that the requested 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 552.108(b)(2) of the Government Code excepts from public disclosure “[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). You state no investigation is pending in regard to the submitted information and that no police report was generated. Based on these representations and our review, we agree that section 552.108(b)(2) is applicable to the submitted information.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th

Dist.] 1975); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may generally withhold the submitted information under section 552.108(b)(2) of the Government Code.

However, we note that the requestor in this instance is with the Adult Protective Services division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, DFPS’s duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides in pertinent part:

(a) The [DFPS]¹ or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency.

Id. § 48.154. Thus, to the extent DFPS is seeking the information to perform its duties under chapter 48, DFPS has a right of access to the submitted information, and it must be released to this requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, to the extent DFPS is seeking the submitted information to perform its duties under chapter 48, DFPS has a right of access to the submitted information, and it must be released to this requestor.² Otherwise, except for basic information, the department may withhold the submitted information under section 552.108(b)(2) of the Government Code.

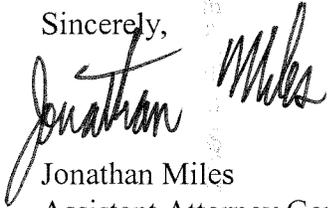
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

²In such a case, the department must again seek a decision if it receives another request for this information from a different requestor.

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 black ink, appearing to read "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 425958

Enc. Submitted documents

c: Requestor
(w/o enclosures)