



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2011

Lieutenant William Ryan  
Record Division  
Pharr Police Department  
1900 South Cage  
Pharr, Texas 78577-6751

OR2011-18047

Dear Lt. Ryan:

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# 438126.

The Pharr Police Department (the "department") received a request for any records related to two named individuals and crime analysis reports related to two specified addresses. You claim that 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> 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,

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

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 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007); *see also id.* § 51.02(2) (defining “child” as person who is ten years of age or older and under seventeen years of age at the time of the conduct). Case numbers 2011-00007700, 2011-00007692, and 2008-00030689 involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to this information. As such, this information is confidential under section 58.007(c). Accordingly, the department must withhold case numbers 2011-00007700, 2011-00007692, and 2008-00030689 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code which provides, in pertinent part, as follows:

(a) [T]he 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

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<sup>2</sup>As our ruling is dispositive, we need not address your argument for this information.

(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.

*Id.* § 261.201(a). Upon review, we find case number 2011-00026320 was used or developed in an investigation of alleged or suspected child abuse conducted by the department. *See id.* §§ 261.001(1)(E) (defining “abuse” for the purposes of chapter 261 of the Family Code as including offense of indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as person under 17 years of age). Accordingly, we find this information falls within the scope of chapter 261 of the Family Code. As you do not indicate the department has adopted a rule governing the release of this type of information, we assume that no such regulation exists. We therefore, conclude that case number 2011-00026320 is confidential pursuant to section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold case number 2011-00026320 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup>

Section 552.108(a)(1) of the Government Code 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 that the information at issue relates to ongoing criminal investigations.

We note case number 2009-00029121 pertains to an alleged violation of section 28.03(b)(2) of the Penal Code (criminal mischief). A violation of section 28.03(b)(2) is a misdemeanor offense. *See* Penal Code § 28.03(b)(2). Under article 12.02 of the Code of Criminal Procedure, an indictment, information, or complaint in a misdemeanor case of criminal mischief “may be presented within two years from the date of the commission of the offense, and not afterward.” Crim. Proc. Code art. 12.02(a)-(b). In this instance, the offense in case number 2009-00029121 allegedly occurred on June 6, 2009. You state the department received the request for this information on September 9, 2011. You do not indicate any prosecution of the alleged offense was pending on the date of the department’s receipt of the request. Thus, based on your representations and our review of the information at issue, we find that prosecution of the alleged offense is barred by the statute of limitations. Accordingly, we conclude you have not demonstrated that the release of case number 2009-00029121 would interfere with the detection, investigation, or prosecution of crime.

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<sup>3</sup>As our ruling is dispositive, we need not address your argument for this information.

See Gov't Code § 552.108(a)(1); *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). Therefore, the department may not withhold case number 2009-00029121 under section 552.108(a)(1).

The statute of limitations in case numbers 2011-00026329, 2011-00013213, and 2009-00058085 has not run. Based upon your representation and our review, we conclude the release of case numbers 2011-00026329, 2011-00013213, and 2009-00058085 would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1).

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*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold case numbers 2011-00026329, 2011-00013213, and 2009-00058085 from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We note, however, case number 2009-00029121 contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or county. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(2)). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.<sup>4</sup>

In summary, the department must withhold case numbers 2011-00007700, 2011-00007692, and 2008-00030689 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must also withhold case number 2011-00026320 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, case numbers 2011-00026329, 2011-00013213, and 2009-00058085 may be withheld under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in case number 2009-00029121 under section 552.130 of the Government Code. The remaining information must be released.

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<sup>4</sup>This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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](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 "Damien Shores", written over a horizontal line.

Damien Shores  
Assistant Attorney General  
Open Records Division

DS/sdk

Ref: ID# 438126

Enc. Submitted documents

c: Requestor  
(w/o enclosures)