



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2011

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2011-19171

Dear Ms. Plaster:

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# 440664.

The City of Lewisville (the "city") received a request for information related to two specified police department incident reports. 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.

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. Section 552.101 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 [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:

(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 [the Act], 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 consists of information used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Accordingly, we find the submitted information is subject to section 261.201 of the Family Code.

The requestor is the legal representative of a parent of the child who is the victim listed in the submitted information, and is not alleged to have committed the suspected abuse. Thus, the city may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). The city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code. In addition, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must or may be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your remaining arguments under section 552.101 and 552.108.

You raise section 58.007 of the Family Code for the submitted information. 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. *Id.* § 58.007(c). The relevant portion of 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.

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). You state incident report # 11-08967 concerns an allegation of sexual assault by three eleven year old suspects. You also state incident report # 11-08924 concerns an allegation of sexual assault by an adult suspect and the narrative pages of incident report # 11-08924 contain the same information as incident report # 11-08967. Incident report # 11-08967 involves an allegation of delinquent conduct by children that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Based on your representation and our review, we agree incident report # 11-08967 is subject to section 58.007(c) of the Family Code. However, incident report # 11-08924 concerns an allegation of sexual assault by an adult suspect. Consequently, this report is not subject to section 58.007(c)

We next consider your claim section 552.108(a)(1) of the Government Code in regard to the remaining information in incident report # 11-08924. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1) Generally, 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the report at issue relates to a pending criminal investigation. Based upon this representation, we conclude the release of this report 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, 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*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975). Thus, with the exception of the basic front page offense and arrest information, section 552.108(a)(1) applies to the information at issue.

However, both incident reports at issue include a mental health record. Section 552.101 also encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health and Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; ORD No. 565. We have marked mental health records that are confidential under section 611.002. However, sections 611.004 and 611.0045 of the Health and Safety Code permit disclosure of mental health records to a patient or a parent of a minor patient. *Id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). The requestor here may have a statutory right to the mental record at issue as a representative of the parent of a minor patient. Health and Safety Code § 611.004(a)(4). A statutory right of access overcomes general exceptions to disclosure under the Act, including your claim under section 552.108 of the Government Code. *See* Open Record Decision Nos. 613 (1993), 598 (1991). In addition, section 611.004 of the Health and Safety Code prevails over section 58.007(c) because sections 611.004 and 622.0045 are more specific than section 58.007(c) and, under the rules of statutory construction, the more specific provision prevails as an exception to the general provision.¹ *See* Gov't Code § 311.026(b) (“If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.”); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort

¹ Although section 58.007 of the Government Code generally makes juvenile law enforcement records confidential, sections 611.004 and 611.0045 of the Health and Safety Code specifically permit release of mental health records to certain parties and in certain circumstances.

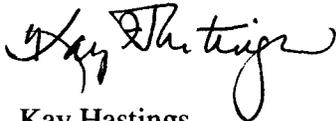
Worth 1977, writ ref'd n.r.e.). Thus, the mental health record we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

In summary, the city must release the marked mental health record only in compliance with chapter 611 of the Health and Safety Code. The city must withhold the remaining information in incident report # 11-08967 based on section 552.101 in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, the city may withhold the remaining information in incident report # 11-08724 under section 552.108(a)(1) of the Government Code.² In releasing basic information, the city must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 440664

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As noted, the requestor in this instance has a special right of access under section 261.201(k) of the Family Code to the information being released. If the city should receive another request for this information from a different requestor, the city should again request an opinion from this office.