



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2012-05199

Dear Mr. Smith:

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# 450305 (Richardson File Number 12-072).

The Richardson Police Department (the "department") received a request for two specified report numbers involving three named individuals. 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 information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 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:

...

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

Id. § 58.007(c), (e), (j)(2). Upon review, we agree report number 201200002734 involves a juvenile allegedly engaged in conduct indicating a need for supervision occurring after September 1, 1997. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Therefore, report number 201200002734 is subject to section 58.007. We note the requestor may be a parent or guardian of the juvenile listed in the report. If the requestor is not a parent

or guardian of the juvenile listed in the report, then report number 201200002734 must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c). However, to the extent the requestor is a parent or legal guardian of the juvenile, he may inspect or copy any law enforcement records concerning his own child under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, 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; and

(3) the identity of the person who made the report.

Id. § 261.201(a), (k)-(l). Upon review, we agree report number 200800036595 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find report number 200800036595 is generally confidential under section 261.201.

As noted above, however, the requestor may be the child’s parent, managing conservator, or other legal representative. Further, the requestor is not alleged to have committed the abuse. As such, this requestor may have a right of access to report number 200800036595 pursuant to section 261.201(k). Because it is unclear whether the requestor is the parent, managing conservator, or other legal representative of the child victim, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victim listed in report number 200800036595, then the department must withhold this information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). However, if the requestor is a parent, managing conservator, or other legal representative of the child victim, pursuant to section 261.201(k), the department may not withhold this report from the requestor under section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Additionally, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You assert report numbers 201200002734 and 200800036595 relate to concluded cases that did not result in

convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to these reports.

However, section 552.108 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). As previously noted, section 261.201(1)(3) provides the reporting party's identity must be redacted. See Fam. Code § 261.201(1)(3). Accordingly, the department must withhold the reporting party's identity from the basic information in report number 200800036595 under section 261.201(1)(3). Thus, with the exception of basic information, the department may withhold report numbers 201200002734 and 200800036595 under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity in report number 200800036595 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not a parent or guardian of the juvenile listed in report number 201200002734, then this report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is not the parent, managing conservator, or other legal representative of the child victim listed in report number 200800036595, then the department must withhold this report 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 is a parent or guardian of the juvenile listed in report number 201200002734 and if the requestor is the child victim's parent, managing conservator, or other legal representative in report number 200800036595, then with the exception of basic information, the department may withhold these reports under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity in report number 200800036595 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 450305

Enc. Submitted documents

c: Requestor
(w/o enclosures)