



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2012

Mr. Daniel Bradford
Assistant County Attorney
Travis County Sheriff's Office
P.O. Box 1748
Austin, Texas 78767

OR2012-05623

Dear Mr. Bradford:

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# 451080.

The Travis County Sheriff's Office (the "sheriff's office") received two requests from two different requestors for a specified offense report. The first request was received by the sheriff's office on January 31, 2012 (the "first requestor"), and the second on February 21, 2012 (the "second requestor"). You claim 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 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). The submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261.201 of Family Code). Thus, we find the submitted information is within the scope of section 261.201(a). Both requestors are parents of the child victim and are not alleged to have committed the suspected abuse. Thus, the sheriff’s office may not withhold the submitted information from these requestors on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l) provides, before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Thus, the sheriff’s office must redact the identity of the reporting party under section 261.201(l)(3). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Thus, we must address the applicability of section 58.007 of the Family Code and section 552.108 of the Government Code to the submitted information.

Section 552.101 also encompasses section 58.007 of the Family Code, the relevant language of which reads 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 Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 also allows for the review or copy of juvenile law enforcement records by a child suspect's parent or guardian. *Id.* § 58.007(e).

The submitted documents involve juvenile conduct occurring after September 1, 1997; therefore, the submitted report is subject to section 58.007. The second requestor is not the parent of the juvenile suspect in the submitted report. Thus, with regard to the second requestor, it does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential in its entirety pursuant to section 58.007(c) of the Family Code and must not be released to the second requestor.² The first requestor, however, is the parent of the juvenile suspect; therefore, the information pertaining to the first requestor's child may not be withheld from her under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). Nevertheless, section 58.007(j) provides that information that is excepted from required disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2); *see also id.* § 261.201(1)(2). Thus, we must address the applicability of section 552.108 to the submitted information as it relates to the first requestor.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

²Because our ruling regarding the second request is dispositive, we do not address your arguments under section 552.108 for the second request.

You state the submitted information relates to pending criminal investigation and release of the information would interfere with the prosecution of crime. Based upon your representation and our review, we find that section 552.108(a)(1) is applicable to the submitted information. *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*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of the basic information, the sheriff's office may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.³ In releasing basic information, the sheriff's office must withhold the identity of the person who made the report under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the sheriff's office must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(e) of the Family Code. With the exception of basic information, the sheriff's office may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold from the basic information provided to the first requestor the identity of the person who made the report under section 552.101 of the Government Code in conjunction with section 261.201(l)(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

³We note the first requestor has a right of access to information that would otherwise be confidential with respect to the general public. *See* Fam. Code § 261.201(k); *see also* Fam. Code § 58.007(e). Thus, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.

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 "Amy Shipp", written in a cursive style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/akg

Ref: ID# 451080

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)