



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2012

Ms. Leticia Mendiola  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2012-05649

Dear Ms. Mendiola:

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# 451203.

The McAllen Police Department (the "department") received a request for the full report for case number 2012-00002797. 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 made confidential by other statutes. You raise sections 58.007 and 261.201 of the Family Code.

We first consider your claim under section 58.007(c) of the Family Code, 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 Subchapter B.

Fam. Code § 58.007(c). Section 58.007 does not apply to information that does not concern a juvenile offender. *See id.* § 51.04(a) (stating title 3 of Juvenile Justice Code covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). The information at issue does not concern a juvenile offender. *See id.* § 51.02(2)(defining “child” for purposes of title 3 of Juvenile Justice Code). Therefore, the department may not withhold the information at issue based on section 552.101 in conjunction with section 58.007.

We next consider your claim under section 261.201 of the Family Code. Section 261.201 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.

(1) 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.

Fam. Code § 261.201(a), (k), (1)(2)-(3). Upon review, we find the submitted information consists of a report used or developed in the department's investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of aggravated sexual assault as a person under 17 years of age). Accordingly, we determine the submitted report is within the scope of section 261.201 of the Family Code. However, the requestor is a parent of the child victims listed in the report and is not alleged to have committed the alleged or suspected abuse. Therefore, the submitted report may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, we note section 261.201(1)(3) provides that 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(1)(3). Further, section 261.201(1)(2) states that any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). You assert the submitted report is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we address this argument for the report.

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. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the submitted report pertains to an investigation that was concluded as unfounded. Based on your representations and our review, we conclude that the department has demonstrated that section 552.108(a)(2) is applicable to the submitted report.

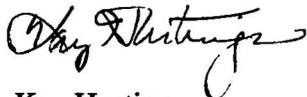
We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers

to the basic front-page information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), and includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). As noted above, the identity of the party who made the report must be redacted. See Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>1</sup>

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 451203

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.