



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2012

Ms. Leticia Mendiola  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2012-08694

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# 455658.

The McAllen Police Department (the "department") received a request for three specified reports. You claim 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.

Initially, we note you have submitted only two of the three requested reports. We assume that, to the extent the remaining requested report existed in the possession of the department when it received the request for information, you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007. Section 58.007(c) 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 at the time of the conduct). Upon review, we find no portion of the submitted information involves juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Thus, none of the submitted information may be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in 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.

*Id.* § 261.201(a). You assert the submitted information is confidential under section 261.201. However, these reports relate to child custody disputes. Furthermore, you have not demonstrated how the submitted information was otherwise used or developed by the department in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, the submitted

information is not confidential under section 261.201 and may not be withheld under section 552.101 on that basis.

You also raise section 552.108 of the Government Code, which provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably show the exception is applicable to the requested information by explaining 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 the submitted information pertains to ongoing criminal investigations. Based upon your representation, we conclude release of report number 2010-00064314 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). Thus, we find section 552.108(a)(1) is applicable to report number 2010-064314. However, we note report number 2007-020213 relates to an incident of alleged interference with child custody that occurred on March 2, 2007. The longest possible statute of limitations for this offense is three years from the date of the commission of the offense. *See Code Crim. Proc. art. 12.01(7)* (limitations on felony not otherwise listed in article 12.01 of Code of Criminal Procedure is three years from date of offense); *see also Penal Code § 25.03(d)* (providing that interference with child custody is a state jail felony offense). Thus, the statute of limitations for the offense in report number 2007-020213 has expired. You have not informed this office that any criminal charges were filed within the limitations period nor have you explained how release of report number 2007-020213 would interfere with the detection, investigation, or prosecution of an offense for which the statute of limitations has not run. Thus, we find you have not demonstrated that release of report number 2007-020213 would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code § 552.108(a)(1)*.

We note 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 2010-064314 under section 552.108(a)(1) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the remaining information.

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 455658

Enc. Submitted documents

c: Requestor  
(w/o enclosures)