



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-10025

Dear Mr. Weir:

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# 457755 (COSA File# W006858).

The City of San Antonio (the "city") received a request for a specified case number. You claim that the requested 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 protected by other statutes, 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 at the time of the reported conduct. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 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)(2). The submitted information involves a suspect who was twelve years old at the time of the reported conduct and we find the report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Therefore, the submitted information is within the scope of section 58.007(c). However, the requestor may be the guardian of the juvenile suspect listed in the report and, thus, may have a right of access to information otherwise made confidential by section 58.007(c). *See id.* § 58.007(e) (law enforcement records may be inspected by child's parent or guardian). As we are unable to determine whether the requestor is the juvenile suspect's guardian, we must rule conditionally. If the requestor is not a guardian of the juvenile suspect, the department must withhold the submitted information in its entirety under section 552.101 in of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a guardian of the juvenile suspect, the city may not withhold the submitted information from the requestor on the basis of section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides before a juvenile's guardian may inspect the information, the city must withhold information that is excepted from required

disclosure under the Act or other law. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments for this information.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 department 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 disclosure under [the Act], or other law[.]

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

Id. § 261.201(a), (k), (l)(2)-(3). Because the requested information pertains to an investigation of alleged or suspected child abuse, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11

as a minor younger than 17 years of age). We note, however, that the requestor, who is not alleged to have committed the suspected abuse, may be a parent, managing conservator, or other legal representative of one or both of the child victims. *See* Fam. Code § 261.201(k). Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of either of the child victims, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a parent, managing conservator, or other legal representative of either of child victims, the city may not use section 261.201(a) to withhold the submitted information from this requestor. To the extent the requestor is a parent, managing conservator, or other legal representative of the child victims, we address your argument under section 552.108 of the Government Code. *See* Fam Code § 261.201(1)(2).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the submitted information would interfere with a pending criminal investigation. Based on your representation, we conclude section 552.108(a)(1) is generally 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 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the complainant. *See* ORD 127 at 4. However, the complainant listed in the submitted information is also the reporting party. As previously noted, section 261.201(1)(3) of the Family Code states the identity of the reporting party must be withheld. Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the submitted information may be withheld under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the city 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.¹

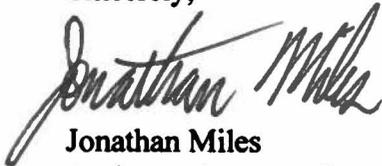
¹We note the social security number of an arrestee is part of basic information. Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov’t Code § 552.147(b).

In summary, if the requestor is not a guardian of the juvenile suspect, the department must withhold the submitted information 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 a guardian of the juvenile suspect, but is not a parent, managing conservator, or other legal representative of either of the child victims, the city must withhold the submitted information 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 guardian of the juvenile suspect, as well as a parent, managing conservator, or other legal representative of either of the child victims, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city 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.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 457755

Enc. Submitted documents

c: Requestor
(w/o enclosures)