



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2012

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2012-10519

Dear Mr. Scott:

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# 459348.

The Conroe Police Department (the "department") received twelve requests from the same requestor for thirty-four specified cases. You state you have released some information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code* § 552.301(a), (e)(1)(D). We understand the department has redacted, in part, a Texas license

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

plate number subject to 552.130(a)(2) as permitted by Open Records Decision No. 684 (2009).² However, you do not assert, nor does our review of our records indicate, that the department is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information in this instance, we will address its public availability. In the future, the department should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

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 261.201 of the Family Code. Section 261.201 provides as follows:

(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.

Fam. Code § 261.201(a). Upon review, we find Exhibit B-3 was used or developed in an investigation of child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). Therefore, this information falls within the scope of section 261.201(a)(2). In addition, Exhibit E-3 consists of a report of alleged or suspected child abuse and reveals the identity of an individual who made a report. Thus, this information falls within the scope of

²Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2) of the Government Code, without requesting an attorney general decision.

section 261.201(a)(1). You state the department has not adopted a rule that governs the release of this type of information. Thus, we conclude Exhibits E-3 and B-3 are confidential pursuant to sections 261.201(a)(1) and 261.201(a)(2), respectively, of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibits B-3 and E-3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in part:

(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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of section 58.007(c) of Family Code). The information at issue involves delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the age of the juvenile offenders in Exhibit J-3. Accordingly, we must rule conditionally. It does not appear any of the exceptions in section 58.007 apply to Exhibit J-3. Thus, to the extent any of the offenders identified in the report were ten years of age or older and under seventeen years of age at the time of the incident, Exhibit J-3 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if Exhibit J-3 pertains to offenders who were not ten years of age or older and under seventeen years of age at the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

time of the commission of the crime, Exhibit J-3 is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis.

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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits A-2, B-1, C-2, C-3, D-2, D-3, F-2, F-3, G-1, G-3, H-1, I-1, J-1, K-1, K-2, K-3, and L pertain to pending criminal investigations. Based on your representation and our review of the information, we conclude release of this information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to these Exhibits.

Section 552.108(a)(2) 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 . . . 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)(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)(1)(A). You state Exhibits A-1, A-3, B-2, C-1, D-1, E-1, E-2, F-1, G-2, H-2, H-3, I-2, I-3, J-2, and J-3 pertain to cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to Exhibits A-1, B-2, C-1, D-1, E-1, E-2, F-1, G-2, H-2, H-3, I-2, I-3, J-2, and J-3. However, we note Exhibit A-3 does not pertain to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. Consequently, we determine that Exhibit A-3 is not excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code and may not be withheld by the department on that basis.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, which you state has been released, the department may

withhold Exhibits A-2, B-1, C-2, C-3, D-2, D-3, F-2, F-3, G-1, G-3, H-1, I-1, J-1, K-1, K-2, K-3, and L under section 552.108(a)(1) of the Government Code and Exhibits A-1, B-2, C-1, D-1, E-1, E-2, F-1, G-2, H-2, H-3, I-2, I-3, J-2, and J-3 under section 552.108(a)(2) of the Government Code.⁴

In summary, the department must withhold Exhibits B-3 and E-3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent any of the offenders identified in the report were ten years of age or older and under seventeen years of age at the time of the incident, Exhibit J-3 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. If Exhibit J-3 pertains to offenders who were not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the department may withhold Exhibit J-3 under section 552.108(a)(2) of the Government Code, except for basic information. With the exception of basic information, which you state has been released, the department may withhold Exhibits A-2, B-1, C-2, C-3, D-2, D-3, F-2, F-3, G-1, G-3, H-1, I-1, J-1, K-1, K-2, K-3, and L under section 552.108(a)(1) of the Government Code and Exhibits A-1, B-2, C-1, D-1, E-1, E-2, F-1, G-2, H-2, H-3, I-2, I-3, and J-2 under section 552.108(a)(2) of the Government Code. As you raise no further exceptions to disclosure for Exhibit A-3, it must be released.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information:

Ref: ID# 459348

Enc. Submitted documents

c: Requestor
(w/o enclosures)
