



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-19581

Dear Mr. Mann:

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# 474916 (GCA12-0832).

The Garland Police Department (the "department") received a request for any information pertaining to two specified case numbers. You claim some of the submitted 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) Except as provided by Section 261.203, the 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

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

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the report for case number 2012R022232 relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). We note, however, the requestor in this case is a parent of the child victim named in the report, and the requestor is not accused of having committed the abuse. Thus, pursuant to 261.201(k), the report may not be withheld from the requestor under section 261.201(a). *See* Fam. Code § 261.201(k). However, we note subsection 261.201(l)(2) states any information that is excepted from required public disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Accordingly, we will address your argument under section 552.108 of the Government Code for the report for case number 2012R022232.

Section 552.101 of the Government Code also encompasses 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. *Id.* § 58.007(c). 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. *See id.* § 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). Upon review, we find the report for case number 2012R022198 involves a juvenile runaway. Thus, this information involves a juvenile engaged in conduct indicating a need for supervision and is subject to section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). We note the requestor is a parent of the juvenile runaway listed in the submitted report. Under section 58.007(e), the requestor may inspect or copy law enforcement records concerning her child. *Id.* § 58.007(e). We note section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your

argument under section 552.108 of the Government Code for the report for case number 2012R022198.

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 the information you have marked in the reports for case numbers 2012R022232 and 2012R022198 is related to pending criminal investigations. Based on your representations and our review, we conclude release of the information at issue 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 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). Accordingly, the department may withhold the information you have marked in the reports for case numbers 2012R022232 and 2012R022198 under section 552.108(a)(1) of the Government Code. The department must release the remaining information.²

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 Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

²We note the requestor has a special right of access to the information being released in this instance. *See Fam. Code* §§ 58.007(e), 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.

Ref: ID# 474916

Enc. Submitted documents

c: Requestor
(w/o enclosures)