



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2013

Ms. Rachel L. Lindsay
Counsel for the City of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-00872

Dear Ms. Lindsay:

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# 476441.

The Town of Flower Mound (the "town"), which you represent, received a request for all records pertaining to the requestor's daughter. You state the town has released some information to the requestor. 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.

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 that other statutes make confidential, 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. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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[.]

Id. § 58.007(c), (e). Upon review, we find some of the submitted information consists of law enforcement records involving juvenile delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997; therefore, this information is subject to section 58.007. However, the requestor is a parent of the juvenile offender listed in the information at issue. Therefore, the requestor has a right to inspect law enforcement records concerning her child under subsection 58.007(e), and the town may not withhold the information at issue from this requestor under section 552.101 in conjunction with subsection 58.007(c). *See id.* § 58.007(e).

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

(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). We note the submitted information relating to incident numbers 10040144, 12007429, 12035622, and 12037783 was used or developed by the town's police department (the "department") in investigations under chapter 261. *See id.* § 261.001(1) (defining "abuse" 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). Although the requestor is a parent of the child victim listed in the submitted information relating to incident numbers 10040144, 12007429, and 12035622, the requestor is alleged to have committed the alleged child abuse. Thus, the requestor does not have a right of access to the submitted information relating to incident numbers 10040144, 12007429, and 12035622 under section 261.201(k). *See id.* § 261.201(k). Accordingly, the town must withhold the submitted information relating to incident numbers 10040144, 12007429, and 12035622 from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.

However, we also note the requestor is a parent of the child victim named in the submitted information relating to incident number 12037783 and is not accused of committing the alleged or suspected abuse. Accordingly, the town may not withhold from this requestor the submitted information relating to incident number 12037783 that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your claim under section 552.108 of the Government Code for the submitted information relating to incident number 12037783.

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 submitted information relating to incident number 12037783 pertains to a pending criminal investigation by the department. Based on your representation and our review, we conclude release of the information at issue 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, section 552.108(a)(1) is generally applicable to the submitted information relating to incident number 12037783.

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.* §§ 552.108(a)(2), .301(e)(1)(A). You state the submitted information relating to incident number 12037544 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is generally applicable to the submitted information relating to incident number 12037544.

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; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the town may withhold the submitted information relating to incident number 12037783 under section 552.108(a)(1) of the Government Code and the submitted information relating to incident number 12037544 under section 552.108(a)(2) of the Government Code.

In summary, the town must withhold the submitted information relating to incident numbers 10040144, 12007429, and 12035622 from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. With the exception of basic information, the town may withhold the submitted information relating to incident number 12037783 under section 552.108(a)(1) of the Government Code and the

submitted information relating to incident number 12037544 under section 552.108(a)(2) of the Government Code. The town must release the remaining information.¹

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/som

Ref: ID# 476441

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to some of the information being released pursuant to section 58.007(e) of the Family Code, section 261.201(k) of the Family Code, and section 552.023 of the Government Code. Because such information is confidential with respect to the general public, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.