



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

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

OR2013-12251

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# 493298 (GCA 13-0301).

The Garland Police Department (the "department") received a request for a specified incident report. 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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

(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). The submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code and is generally confidential under section 261.201(a) of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* (defining “child” for purposes of section 261.201).

In this instance, however, the submitted information indicates that the requestor, who is not alleged to have committed the suspected abuse or neglect, is a parent of the child victim listed in the report. *See id.* § 261.201(k). Therefore, the department may not withhold from this requestor information concerning the alleged abuse that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). Nevertheless, the department may raise additional exceptions to disclosure. *See id.* § 261.201(l)(2). Accordingly, we will consider your remaining arguments against disclosure.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Section 58.007 of the Family Code provides, in relevant 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.

...

(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 [the Act] or other law.

Id. § 58.007(c), (e), (j)(2); *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). The submitted information involves delinquent conduct by a child occurring after September 1, 1997. *See id.* § 51.03

(defining “delinquent conduct” for purposes of Family Code § 58.007). Therefore, the submitted information is subject to section 58.007(c).

In this instance, however, the requestor may be the parent or guardian of the juvenile suspect listed in the report and 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 a parent or guardian of the juvenile suspect, we must rule conditionally. If the department determines the requestor is not a parent or 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 department determines the requestor is a parent or guardian of the juvenile suspect, the department may not withhold the submitted information from the requestor on the basis of section 58.007(c) of the Family Code. However, the department may raise additional exceptions to disclosure. *See id.* § 58.007(j)(2). As you raise section 552.108(a)(1) of the Government Code, we will consider that argument as it applies to this information.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 department objects to the disclosure of a portion of the submitted information, because it pertains to a criminal investigation that is ongoing. Based upon this representation, we find release of the information you have indicated 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, if the requestor is a parent or guardian of the juvenile suspect, the department may withhold the information you have indicated pursuant to section 552.108(a)(1) of the Government Code.

In summary, if the department determines the requestor is not a parent or 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 parent or guardian of the juvenile suspect, the department

may withhold the information you have indicated under section 552.108(a)(1) of the Government Code and 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James D. Cypert
Assistant Attorney General
Open Records Division

JD/ac

Ref: ID# 493298

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor may have 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.