



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2013

Mr. Robert G. Schleier, Jr.  
Law Office of Robert G. Schleier, Jr., P.C.  
116 North Kilgore Street  
Kilgore, Texas 75662

OR2013-14448

Dear Mr. Schleier:

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# 497310.

The Kilgore Police Department (the "department") received a request for three specified incident reports involving the requestor's child. You claim that 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 made confidential by other statutes, such as section 58.007 of the Family Code, which provides in relevant 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.

...

(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.

Fam. Code § 58.007(c), (e), (j)(2). Under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find the submitted information consists of law enforcement records of a juvenile engaged in delinquent conduct on or after September 1, 1997. Therefore, we find the submitted information is generally confidential under section 58.007(c). However, the requestor states she is a parent of the juvenile suspect listed in the information at issue. As such, the requestor has a right of access under section 58.007(e) to law enforcement records concerning her child. *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). We note one of the submitted reports is also subject to section 261.201 of the Family Code. Accordingly, we will consider the applicability of this section to incident report number 121112814, as well as your argument under section 552.108 of the Government Code to the remaining information.

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 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.

*Id.* § 261.201(a). Upon review, we find incident report number 121112814 was used or developed in an investigation under chapter 261. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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, the submitted information related to this report is within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information related to incident report number 121112814 is confidential under section 261.201(a) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>1</sup>

Section 552.108 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 remaining submitted information relates to pending criminal investigations. Based on your representations, we conclude release of most of this information 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).

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<sup>1</sup>Because our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

We note, however, incident report number 121214235 includes a citation. Because a copy of the citation is provided to the person who is the subject of the citation, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the citation, which we have marked for release, under section 552.108. However, we find section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

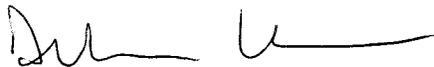
We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the citation and basic information, the department may withhold the remaining information related to incident report numbers 121214235 and 130505836 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information related to incident report number 121112814 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the citation we have marked for release and basic information, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/som

Ref: ID# 497310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)