



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Mr. Steven E. Meyer
Assistant City Attorney
Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2013-19722

Dear Mr. Meyer:

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# 509825 (APD Ref. No. 13045).

The Arlington Police Department (the "department") received a request for four specified incident reports, as well as all other incident reports pertaining to a specified address during a specified time period. 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 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); *see id.* § 51.03(a)(defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find Exhibit C involves a juvenile offender, so as to fall within the scope of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

Section 552.101 of the Government Code also encompasses section 261.201(a) 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.

Id. § 261.201(a). We note Exhibit D was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(defining “abuse” for purposes of Fam. Code ch.261). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of

¹As our ruling is dispositive, we need not address your remaining argument for this information.

this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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(a)(1) must reasonably explain how and why the 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 Exhibits B and E relate to pending criminal investigations. Based upon your representation and our review, we conclude that the release of Exhibits B and E 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 applicable to Exhibits B and E.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibits B and E under section 552.108(a)(1).

You also claim the basic information in Exhibit B is subject to the doctrine of common-law privacy, which is encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate how any of the basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the basic information in Exhibit B under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The

²As our ruling is dispositive, we need not address your remaining arguments for this information.

department must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the department may withhold Exhibits B and E 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, 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 509825

Enc. Submitted documents

c: Requestor
(w/o enclosures)