



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2014

Ms. Evelyn W. Kimeu  
Staff Attorney  
Houston Police Department  
1200 Travis Street  
Houston, Texas 77002-6000

OR2014-01696

Dear Ms. Kimeu:

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# 512373 (ORU No. 13-6766).

The Houston Police Department (the "department") received a request for (1) the department's files pertaining to twenty specified incidents and any notices or letters concerning those incidents, and (2) for the calendar year 2013, a copy of each notice sent by the department to an apartment complex in four specified zip codes regarding a review of statistical crime data and any correspondence regarding such notices from the apartment complex. You inform us you will release a portion of the requested 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. This section encompasses information protected by other statutes, such as 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.

Fam. Code § 261.201(a). Upon review, we find report number 121220213 was used or developed in an investigation by the department of alleged or suspected child abuse. *See id.* § 261.001(1)(A) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). As you do not inform us the department has adopted a regulation regarding the release of this type of information, we assume no such rule exists. Therefore, report number 121220213 is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See Id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 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.

*Id.* § 58.007(c). Upon review, we find report numbers 001235913 and 013463313 pertain to allegations of delinquent conduct that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. One of the suspects at issue in report number 013463313 was sixteen years old at the time of the conduct at issue. Therefore, report number 013463313 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, we are unable to determine the age of the suspects at issue in report number 001235913. Accordingly, we must rule conditionally

for this report. Thus, if one of the suspects at issue in report number 001235913 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, report number 001235913 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if none of the suspects at issue in report number 001235913 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, report number 001235913 is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. In that event, we address your argument against disclosure of this report. We will also consider your argument against the disclosure of the remaining reports.

Section 552.108(a) 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: (1) 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 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 the information in Exhibits 3 and 3A pertains to an open and active criminal investigation. You also state the reports in Exhibit 4 pertain to criminal investigations that are inactive pending additional leads. You inform us the statutes of limitations for the reports in Exhibit 4 have not run, and the cases may be reactivated once additional leads are developed. Based upon these representations, we conclude section 552.108(a)(1) is applicable and the release of Exhibits 3, 3A, and 4 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).

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. 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 has concluded in a final result other than a conviction or deferred adjudication. You state the information in Exhibit 6 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to Exhibit 6.

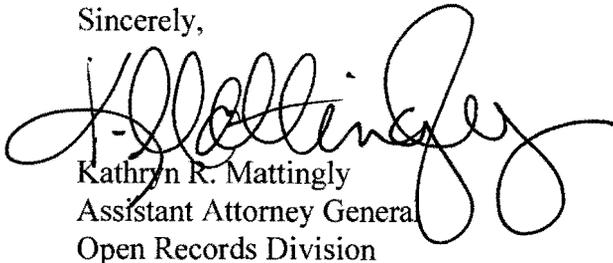
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of the basic information, you may withhold Exhibits 3, 3A, and 4 under section 552.108(a)(1) of the Government Code, and you may withhold Exhibit 6 under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold report number 121220213 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and report number 013463313 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If one of the suspects at issue in report number 001235913 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold report number 001235913 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If none of the suspects at issue in report number 001235913 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, with the exception of basic information, the department may withhold report number 001235913 under section 552.108(a)(1) of the Government Code. With the exception of the basic information, the department may withhold Exhibits 3 and 3A and the remaining reports in Exhibit 4 under section 552.108(a)(1) of the Government Code, and the department may withhold Exhibit 6 under section 552.108(a)(2) 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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 512373

Enc. Submitted documents

c: Requestor  
(w/o enclosures)