



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2014

Mr. David H. Guerra
Counsel for the City of Mission
King, Guerra, Davis & Garcia
P.O. Box 1025
Mission, Texas 78573

OR2014-02899

Dear Mr. Guerra:

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# 514147.

The City of Mission (the "city"), which you represent, received a request for information pertaining to twenty-five specified cases. 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.

Initially, we note you have not submitted information pertaining to case numbers 2007-00016108, 2008-00030819, 2010-00028173, 2011-00026209, 2011-00026523, 2012-00007207, 2013-00014436, and 2013-00035379. We assume, to the extent this information existed on the date the city received the request, the city has released it. If the city has not released any such information, it must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

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 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(c). 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.

Fam. Code § 58.007(c). 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 when the conduct occurred. *See id.* § 51.02(2). You state the reports you have indicated are confidential under section 58.007. Upon review, we conclude the reports we have marked consist of law enforcement records involving juvenile delinquent conduct occurring after September 1, 1997, and are, therefore, subject to section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the reports we have marked are confidential under section 58.007(c) of the Family Code and must be withheld in their entireties under section 552.101 of the Government Code. However, the remaining reports at issue involve a suspect who is under the age of ten. *See id.* § 51.02(2). Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the remaining reports at issue are not confidential under section 58.007(c). *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection). Thus, as you have not established the remaining reports at issue are confidential under section 58.007 of the Family Code, the city may not withhold them under section 552.101 on that ground.

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the reports you have indicated were used or developed in investigations of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the city’s police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the reports at issue are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Therefore, the city must withhold the reports you have indicated in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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 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 remaining reports you have indicated relate to pending criminal investigations. Based on your representation and our review, we conclude the release of the reports 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 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 the reports at issue.

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

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 the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the reports you have indicated relate to concluded cases that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the reports at issue.

Section 552.108, however, 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 considered to be basic information). We note basic information includes, among other things, an arrestee's name, race, sex, age, and address. *See Houston Chronicle*, 531 S.W.2d at 179-80; *see also* ORD 127. We also note you have marked the entire narrative portions of the reports at issue for withholding. The remaining information in the reports at issue do not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Accordingly, the city must release sufficient portions of the reports at issue to encompass basic information as described by *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* ORD 127. Thus, with the exception of basic information, the city may withhold the remaining reports you have indicated under section 552.108(a)(1) and (a)(2) of the Government Code.

We note some of the remaining information is subject to section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold under section 552.101 of the Government Code the reports we have marked in conjunction with section 58.007 of the Family Code and the reports you have indicated in conjunction with section 261.201 of the Family Code. With

the exception of basic information, which must be released, the city may withhold the remaining reports you have indicated under section 552.108(a)(1) and (a)(2) of the Government Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must release the remaining information.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 514147

Enc. Submitted documents

c: Requestor
(w/o enclosures)