



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2014

Mr. Juan R. Molina  
Counsel For The City of Mercedes  
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P.O. Box 190  
Weslaco, Texas 78596

OR2014-22949

Dear Mr. Molina:

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# 549160.

The City of Mercedes (the "city"), which you represent, received a request for five specified incident reports. The city claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the city did not submit the requested information pertaining to incident report number 1305015. We assume, to the extent this report existed when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).*

We next note incident report number 1305016 is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release incident report number 1305016 in response to this request. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd).

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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(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.

...

(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). Upon review, we find incident report number 1101506 was used or developed by the city’s police department in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining

“child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this report is within the scope of section 261.201(a). The requestor is a parent of the child victim and this individual is not alleged to have committed the suspected abuse. Accordingly, the city may not withhold this report from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(2) provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we must address whether this report is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See id.* § 58.007(c). Section 58.007 provides, in relevant part, the following:

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act], or other law.

*Id.* § 58.007(b)-(c), (e), (j). Although you raise section 58.007(b), we note the submitted information consists of law enforcement records that the city's police department created and maintains. You have not explained how the submitted information consists of the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under Title 3 of the Family Code. *See id.* § 58.007(b). Accordingly, we find the department has failed to demonstrate the applicability of section 58.007(b) of the Family Code to the submitted information. Nevertheless, we find the submitted responsive reports involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, the submitted responsive information is confidential under section 58.007(c) of the Family Code. We note the requestor is not a parent of the juvenile offender in incident report number 1101506. Thus, the city must withhold incident report

number 1101506 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Nevertheless, the requestor is a parent of one of the juvenile offenders at issue in the remaining responsive reports. Accordingly, the city may not withhold the remaining responsive information under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). However, the city must withhold the personally identifiable information concerning other juvenile offenders and a juvenile witness, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1).<sup>1</sup> *Id.* § 58.007(j)(1). In addition, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or law must be redacted before a governmental body releases information pursuant to section 58.007(e). *Id.* § 58.007(j)(2). Thus, we will determine whether the remaining responsive information is otherwise excepted from release under the Act.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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<sup>1</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You assert incident report numbers 1413809 and 1401506 are excepted from disclosure under section 552.108 because their release "may hinder the prosecution of this case." However, a governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us either of these reports pertains to an ongoing criminal investigation or prosecution, nor have you explained how their release would interfere with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). You have not explained how these reports pertain to investigations that concluded in final results other than a conviction or deferred adjudication. Accordingly, you have failed to demonstrate the applicability of either subsection 552.108(a)(2) or 552.108(b)(2). Subsection 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer collected or disseminated under section 411.048. *See id.* § 552.108(a)(3). Lastly, you do not assert the reports at issue were prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See*

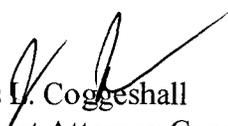
*id.* § 552.108(a)(4), (b)(3). Therefore, the city may not withhold incident report numbers 1313809 and 1401506 under section 552.108 of the Government Code.

To conclude, the city must withhold incident report number 1101506 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The city must release the remaining responsive information.<sup>2</sup>

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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 549160

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.