



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2014

Ms. Judi S. Rawls
Police Administration Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2014-23122

Dear Ms. Rawls:

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# 547794.

The Beaumont Police Department (the "department") received a request for nine categories of information pertaining to a named individual. You state the department has made some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state you have notified third parties of the request for information and of their rights to submit comments to this office.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

You inform us some of the requested information is subject to previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-06338 (2012) and 2014-07855 (2014). In Open Records Letter No. 2012-06338, this office determined that the information at issue must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In Open Records Letter No. 2014-07855, this office determined that some of the information at issue was subject to section 261.201 of the Family Code and must be withheld under

¹As of the date of this letter, we have not received any comments from interested third parties.

section 552.101 of the Government Code, some of the information must be withheld under section 552.130 of the Government Code, some information was excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code, and the remaining information at issue must be released. We note that relevant facts and circumstances have changed since the issuance of our previous rulings. In this instance, the submitted information reflects the requestor is a parent of the child victims in the information at issue. Further, in Open Records Letter No. 2014-07855, the department asserted that release of the submitted information would interfere with the detection, investigation, or prosecution of crime because it pertained to a pending criminal investigation. However, you inform us that the investigation has now concluded. Therefore, as relevant facts have changed since the issuance of Open Records Letter Nos. 2012-06338 and 2014-07855, we conclude the department may not rely on those rulings as previous determinations. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a “previous determination”). Accordingly, we will consider the applicability of the exceptions you claim.

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 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 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.

...

(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 the information in Exhibit C was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, the information at issue is subject to section 261.201 of the Family Code. We note, however, the requestor is a parent of the child victims named in the information at issue. Furthermore, the requestor is not alleged to have committed the alleged abuse. Therefore, the information at issue may not be withheld from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(l)(2). You raise sections 552.101 and 552.108 of the Government Code as exceptions to disclosure. Therefore, we will address the applicability of these sections to the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) reads 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.

Id. § 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find none of the submitted information constitutes confidential juvenile law enforcement records under section 58.007(c), and none of it may be withheld under section 552.101 on that basis.

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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information concerns concluded investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information.

However, we note 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, which the department must release, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure. In this instance, the requestor has a right of access to some of the basic information being released. *See* Fam. Code § 261.201(k). Thus, if the department receives another request for this information from a different requestor, the department must seek another ruling from this office.

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,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 547749

Enc. Submitted documents

c: Requestor
(w/o enclosures)