



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-21192

Dear Mr. Toulet:

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# 627483 (Midland ID# 20031 and 20051).

The City of Midland (the "city") received a request for information pertaining to a specified report number and a second request from the same requestor for thirteen reports and all records or incidents associated with the specified reports. You state the city released some information responsive to the second request. 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 information made confidential by other statutes. You raise section 552.101 in conjunction with former section 51.14 of the Family Code for some of the submitted information. Former section 51.14 governs law enforcement records pertaining to juvenile delinquent conduct occurring before January 1, 1996. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262 § 100, 1995 Tex. Gen. Laws 2517, 2591. Because the information at issue pertains to incidents occurring after 1996, former section 51.14 is inapplicable in this instance. However, you also raise section 552.101 in conjunction with section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. 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); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct at issue. *Id.* § 51.02(2). Upon review, we find report number 160706036 and incident numbers MP160702660, MP160702726, and MP160702741 involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the city must withhold report number 160706036 and incident numbers MP160702660, MP160702726, and MP160702741 under section 552.101 in conjunction with section 58.007(c).¹

However, section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We find none of the remaining reports at issue identify a juvenile suspect or offender for the purposes of section 58.007. Accordingly, we determine the city has not demonstrated the applicability of section 58.007(c) and may not withhold the remaining information at issue under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in relevant part, the following:

(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

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

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.

Id. § 261.201(a). Exhibit C pertains to an investigation by the city's police department (the "department") of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). As you do not indicate the 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 Exhibit C must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a).

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(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 160706021 relates to a pending criminal investigation and release of the information would interfere with further investigation and prosecution of the crime. Based upon your representation and our review, we conclude release of the information 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 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 the information at issue.

We note, however, section 552.108 of the Government Code 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; Open Records Decision No. 127 (1976) (summarizing the types

of information considered to be basic information). Thus, with the exception of basic information, the city may withhold report number 160706021 under section 552.108(a)(1) of the Government Code.

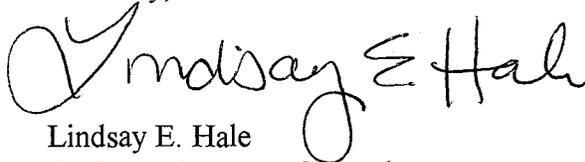
We note portions of the remaining information are subject to section 552.130 of the Government Code.² Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the city must withhold the information we have marked under section 552.130.

In summary, the city must withhold report number 160706036 and incident numbers MP160702660, MP160702726, and MP160702741 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Exhibit C must be withheld in its entirety 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, the city may withhold report number 160706021 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bhf

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 627483

Enc. Submitted documents

c: Requestor
(w/o enclosures)