



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2009

Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2009-00758

Dear Ms. Njuguna:

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# 333062.

The Houston Police Department (the "department") received a request for thirty specified incident reports. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.¹

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 section 261.201 of the Family Code, which provides in relevant part:

(a) The 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) except as otherwise provided in this section, the files, reports, records, communications, 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). You state that the reports you have marked as Exhibits 2 and Exhibit 15 were developed or used in investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for the purposes of section 261.201); *see also id.* § 101.003(a) (defining “child” for the purposes of section 261.201). Based upon this representation and our review, we find that section 261.201 is applicable to these two reports. As you do not indicate that the department has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given this assumption, we conclude that Exhibit 2 and Exhibit 15 are confidential under section 261.201 of the Family Code and must be withheld from disclosure in their entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

Section 552.101 also encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need of supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). 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 Subchapter B, D, and E.

²As our ruling is dispositive with regard to Exhibit 2 and Exhibit 15, we need not address your remaining arguments against disclosure of these reports.

Fam. Code § 58.007(c). Upon review, we agree with your claim that the report you have marked as Exhibit 4 constitutes a juvenile law enforcement record that pertains to delinquent conduct that occurred after September 1, 1997. Furthermore, none of the exceptions in section 58.007 apply to this report. Therefore, Exhibit 4 is confidential under section 58.007 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

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 that the reports marked as Exhibits 5, 6, 7, and 8 each relate to cases that are inactive pending additional leads and which may be reopened because the respective statutes of limitations have not run. You also state that the report marked as Exhibit 14 relates to an active criminal investigation being conducted by the department. Based on these representations, we conclude that release of these reports 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, section 552.108(a)(1) is applicable to the reports marked as Exhibits 5, 6, 7, 8, and 14.

Section 552.108(a)(2) 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 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[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the reports marked as Exhibits 9, 10, 11, 12, and 13 each relate to cases which concluded with a result other than conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, the department must release

basic information from each of the reports withheld under section 552.108, except with regard to the victim-identifying information in Exhibit 13, which is addressed below.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393; *see* Open Records Decision No. 339 (1982); *see also* *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. – El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). You claim that the report marked as Exhibit 3 must be redacted to protect the alleged victim's privacy interests. Upon review, we agree that the department must redact the identifying information in Exhibit 3, which we have marked. We also note that the report marked as Exhibit 13 also involves an alleged sexual assault and therefore implicates the alleged victim's privacy interests. Accordingly, the department must redact any portions of the basic information from Exhibit 13, being released under section 552.108 as discussed above, that identifies or tends to identify the alleged sexual assault victim. We have marked Exhibit 13 accordingly.

In summary, the department must: withhold Exhibits 2 and 15 under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code; withhold the portions of Exhibit 3 which we have marked under common-law privacy in conjunction with section 552.101 of the Government Code; withhold Exhibit 4 under section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code; withhold, with the exception of basic information, which must be released, Exhibits 5, 6, 7, 8, and 14 under section 552.108(a)(1) of the Government Code; and withhold, with the exception of basic information, which must be released, Exhibits 9, 10, 11, 12, and 13 under section 552.108(a)(2) of the Government Code. The basic information released from Exhibit 13 must be redacted to exclude any information that identifies or tends to identify the alleged sexual assault victim.³ The remaining information must be released.

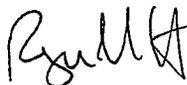
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³In light of these conclusions, we need not address your remaining claims against disclosure.

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 333062

Enc. Submitted documents

cc: Requestor
(w/o enclosures)