



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2009

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2009-02031

Dear Mr. Griffith:

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# 334988.

The McKinney Police Department (the "department"), which you represent, received a request for three specified incident reports. You claim the requested 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. This section encompasses information protected by statutes. Section 261.201(a) of the Family Code 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

(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). Report number 08-75932 is a report that was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault of a child); *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 the disabilities of minority removed for general purposes). We find report number 08-75932 is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find report number 08-75932 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, report number 08-75932 must be withheld under section 552.101.<sup>1</sup>

Section 552.101 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. The relevant language of section 58.007 reads:

(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.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

(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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007, "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). Report number 08-000713 pertains to a juvenile runaway. Accordingly, this report pertains to juvenile conduct indicating a need for supervision. *See id.* § 51.03(b)(2) (defining "conduct indicating a need for supervision" to include a child's voluntary absence from their home without the parent or guardian's consent for a substantial length of time or without intent to return). Thus, this report is subject to section 58.007(c). However, the requestor in this instance is the juvenile suspect listed in the report. Under section 58.007(e), a juvenile may inspect law enforcement records concerning herself. *Id.* § 58.007(e). Thus, the department may not withhold report number 08-000713 under section 58.007(c). Section 58.007(j)(2) states the department may raise any other exceptions to disclosure under the Act or other law. *Id.* § 58.007(j)(2). You claim section 552.108 for this report. Accordingly, we will address your arguments under this exception regarding this report and the remaining report.

Section 552.108(a)(2) 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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report numbers 08-000713 and 08-75842 relate to closed investigations that concluded in results other than conviction or deferred adjudication. Accordingly, we agree report numbers 08-000713 and 08-75842 are subject to section 552.108(a)(2).

We note, however, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, report numbers 08-000713 and 08-75842 may be withheld under section 552.108(a)(2).

In summary, the department must withhold report number 08-75932 under section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold report numbers 08-000713 and 08-75842 under section 552.108(a)(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.

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.oag.state.tx.us/open/index\\_orl.php](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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 334988

Enc. Submitted documents

c: Requestor  
(w/o enclosures)