



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2009-02052

Dear Ms. Mapes:

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# 339183 (KPD Request No. W000423).

The Killeen Police Department (the "department") received a request for all information pertaining to the requestor. You state that the department has released some of the requested information, but claim that the remaining 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.

Initially, we note that one of the submitted documents is not responsive to the request for information. We have marked this document, which the department need not release in response to this request, and this ruling will not address that 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 other statutes. You raise section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides:

- (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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id § 261.201(a). Upon review, we find that incident report numbers 06-005124 and 01-007247 were used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001(4)(A) (definition of “neglect” includes “leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm”); § 101.003(a) (defining “child” for purposes of section 261.201 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”). Thus, we find these reports are within the scope of section 261.201 of the Family Code. You have not indicated that 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 conclude that these reports are confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these reports in their entirety.

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. *See* 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. *See id.* You state that incident report number 07-011221 relates to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to report number 07-011221.

However, as you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*

¹We note that the requestor, as the parent of the children who are the subjects of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. *See* Fam. Code § 261.201(g).

Publishing Co. v. City of Houston, 531 S.W.2d 177, at 186-88 (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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front-page offense information, which you state you have released, you may withhold report number 07-011221 from disclosure based on section 552.108(a)(2).

In summary: (1) the department must withhold incident report numbers 06-005124 and 01-007247 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; and (2) with the exception of basic information, which you state you have released, may withhold the remainder of incident report number 07-011221 under section 552.108(a)(2) of the Government Code.

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, 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 339183

Enc. Submitted documents

c: Requestor
(w/o enclosures)