



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2009

Mr. Charles Wallace
Office of the City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78130

OR2009-09845

Dear Mr. Wallace:

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# 349206.

The New Braunfels Police Department (the "department") received a request for all reports from a specified address involving persons with a specified last name. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, and 552.147 of the Government Code.¹ 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 section 261.201 of the Family Code, which provides in relevant part:

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, we also note that a requestor has a right of access to his own social security number pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

(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.

Fam. Code § 261.201(a). Upon review, we find that some of the submitted information, which we have marked, consists of report of alleged or suspected child abuse or neglect made under chapter 261. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under 18 years of age). Therefore, this information falls within the scope of section 261.201. You have not indicated that the department has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, we conclude that the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).*²

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 for 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,

²However, we note the requestor, as a parent of the child who is the subject 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.” Fam. Code § 261.201(g).

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.

Fam. Code § 58.007(c). We have marked portions of the submitted information that consist of law enforcement records related to juvenile delinquent conduct that occurred after September 1, 1997. The department must withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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 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 generally assert that the submitted reports “are to some degree the subject of an active investigation.” However, you have not affirmatively stated that any of the reports at issue involve open and active criminal investigations, nor have you otherwise demonstrated how release of these reports would interfere with the detection, investigation, or prosecution of crime. Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(a)(1).

You next raise section 552.1325 of the Government Code, which provides:

(a) In this section:

- (1) “Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.
- (2) “Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. None of the submitted information consists of victim impact statements, and, furthermore, you have not established that any of this information was submitted for purposes of preparing a victim impact statement. Accordingly, the department may not withhold any of the remaining information at issue under section 552.1325.

The remaining information at issue contains two Texas driver's license numbers belonging to persons other than the requestor. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" *Id.* § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas driver's license numbers we have marked pursuant to section 552.130.³

In summary, the department must: (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (3) withhold the Texas driver's license numbers we have marked pursuant to section 552.130; and (4) release the remainder of the submitted information.

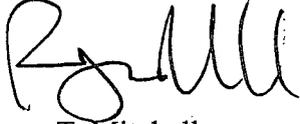
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.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

³We note that the remaining information at issue also contains the requestor's Texas driver's license number. The requestor has a right of access to her own Texas driver's license information under section 552.023 of the Government Code. *See* Gov't Code § 552.023. If the department receives another request for this information, it must seek another ruling from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mitchell". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 349206

Enc. Submitted documents

cc: Requestor
(w/o enclosures)