



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-13432

Dear Ms. Sandoval-Walker:

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# 356134.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim that 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.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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" or "conduct indicating a need for supervision"). For purposes of 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *Id.* § 51.02(2). The relevant language of the Family Code under section 58.007 reads as follows:

¹To the extent additional responsive information existed on the date the department received the instant request, we assume that information has been released to the requestor. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances)

(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.

...

(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.

Id. § 58.007. Upon review, we agree the information at issue involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. Thus, the submitted information is subject to section 58.007. The submitted information reveals the requestor is one of the juveniles listed in the submitted report. Under section 58.007(e), the requestor has a right to inspect law enforcement records concerning herself. *See id.* § 58.007(e). However, section 58.007(j) states that information subject to any other exception to disclosure under

the Act or other law must also be redacted. *Id.* § 58.007(j)(2). Accordingly, we will consider your remaining claims under sections 552.101 and 552.108.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides as follows:

(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 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.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 (to be codified as an amendment of Fam. Code § 261.201). The submitted report pertains to an assault involving a juvenile victim. Upon review, however, we find that you have not demonstrated that the submitted information pertains to a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code or was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001(1) (defining “abuse”), (4) (defining “neglect”). Thus, we determine that the submitted report is not within the scope of section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

You also claim exception for the submitted information under section 552.108 of the Government Code. Section 552.108(a)(2) 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 contend that information at issue pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation, we agree that the information at issue is subject to section 552.108(a)(2).

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref' n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must redact any information that identifies or tends to identify a juvenile offender other than the requestor. See Fam. Code § 58.007(j)(1).

In summary, with the exception of the basic information, the department may withhold the submitted information from disclosure based on section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must redact any information that identifies or tends to identify a juvenile offender other than the requestor pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining basic information must be released.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, 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, toll free, at (888) 672-6787.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

²Because the requestor has a special right of access to basic information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 356134

Enc. Submitted documents

cc: Requestor
(w/o enclosures)