



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2010

Chief Gregory L. Grigg
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2010-19129

Dear Chief Grigg:

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# 403441 (Request # 106-September 2010).

The Deer Park Police Department (the "department") received a request for video footage involving use of force by a police officer, assault or pursuit.¹ You state the department released some of the requested information, but claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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." This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

¹The department sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Incident number 2010-01667 involves juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, we agree the submitted recordings related to incident number 2010-01667 are confidential pursuant to section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code.

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

(a) [T]he 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). You assert the recordings relating to incident number 2010-01029 were used or developed in an investigation under chapter 261 of the Family Code. Upon review, we find the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261.201 of Family Code). You state

the department has not adopted a rule that governs the release of this type of information. Accordingly, we agree the submitted recordings related to incident number 2010-01029 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.

You assert some of the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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[.]” 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* Gov’t Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the recordings related to incident numbers 2010-02052, 2010-02332, 2010-03114, 2010-03192, and 2010-03371 pertain to pending criminal cases. Based on this representation, we conclude the release of these recordings 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the department may withhold the submitted recordings related to incident numbers 2010-02052, 2010-02332, 2010-03114, 2010-03192, and 2010-03371 under section 552.108(a)(1) of the Government Code.

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The following recordings do not contain visible Texas license plate numbers: the first recording on the DVD marked “10-01784”; the fourth, fifth, sixth, seventh, and eighth recordings on the DVD marked “2010-02500”; and the second, third, and fourth recordings on the DVD marked “Disk 1 2010-00386.” Accordingly, the department may not withhold these recordings under section 552.130 of the Government Code, but instead must release this information to the requestor. Texas license plate numbers are visible in the remaining recordings. You inform us the department does not have the technological capacity to redact or blur out the license plate numbers in the submitted recordings at issue. Based on this representation, we agree the department must withhold the remaining recordings under section 552.130 of the Government Code. *See* Open Records Decision No. 364 at 2 (1983).

To conclude, the department must withhold the recordings related to incident 2010-01667 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and the recordings related to incident number 2010-01029 under

section 552.101 in conjunction with section 261.201 of the Family Code. The department may withhold the recordings related to incident numbers 2010-02052, 2010-02332, 2010-03114, 2010-03192, and 2010-03371 under section 552.108(a)(1) of the Government Code. The department must release the following recordings: the first recording on the DVD marked "10-01784"; the fourth, fifth, sixth, seventh, and eighth recordings on the DVD marked "2010-02500"; and the second, third, and fourth recordings on the DVD marked "Disk 1 2010-00386." The department must withhold the remaining recordings pursuant to section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 403441

Enc. Submitted documents

c: Requestor
(w/o enclosures)