



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-00703

Dear Ms. Monteros:

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# 405904 (El Paso CA-OP-10-440).

The El Paso Sheriff's Office (the "sheriff") received a request for all information related to a specified case. You state that some information will be released to the requestor. You assert that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the requested report involves juvenile offenders. 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, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997.¹ For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides, in relevant part:

¹ This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 Subchapters 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(c), (e), (j). Upon review, we conclude that the submitted information involves juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). In this instance, however, the requestor is the mother of one of the juvenile offenders involved in the submitted report. Therefore, the submitted report may not be withheld from this requestor on the basis of section 58.007(c). *See id.* § 58.007(e). However, any

personally identifiable information concerning a juvenile suspect, offender, victim, or witness who is not the child of the requestor must be redacted. *Id.* § 58.007(j)(1). Further, section 58.007(j)(2) of the Family Code provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your arguments against disclosure under sections 552.101 and 552.108.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. This section provides, in relevant part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and
- (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). The submitted report reflects that it was used or developed by the sheriff in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person under 17 years of age). Upon review, we find that the submitted report is thus generally confidential under section 261.201(a) of the Family Code. However, the requestor is a parent of the child who is the subject of the report, and she is not alleged to have committed the suspected abuse. Therefore, in this instance, the sheriff may not use section 261.201(a) to withhold the requested information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, requires that the identity of the reporting party be redacted before a parent may inspect the record. *Id.* § 261.201(l)(3). In addition, section 261.201(l)(2) provides that any information otherwise excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we consider your remaining arguments against disclosure.

Section 552.108(a)(1) provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state that the requested records pertain to a case that is open and pending. Based on your representation and our review, we find that release of the information at issue 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) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree that section 552.108(a)(1) applies to the information at issue.

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*, and includes the identity of the complainant. See 531 S.W.2d 177 at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). You seek to withhold the identity of the complainant. Generally, the identity of a sexual assault victim must be withheld from the public under section 552.101 of the Government Code in conjunction with common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this instance, however, the requestor is a parent of the alleged sexual assault victim. As such, she has a special right of access to information that would ordinarily be withheld to protect her child's common-law privacy interests. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, with the exception of basic information, which you state will be released to the requestor, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.² In releasing the basic information, however, the identity of the person who made the report must be redacted under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.³

In summary, the sheriff may withhold the submitted information, with the exception of basic information, under section 552.108(a)(1). In releasing the basic information, however, the sheriff must redact (1) any personally identifiable information concerning the juvenile offender who is not the child of the requestor, pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and (2) the identity of the person who made the report, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,

² In this instance, the requestor has a special right of access under sections 58.007 and 261.201 of the Family Code to the information being released. See Family Code §§ 58.007(j), 261.201(k). However, should the sheriff receive another request for this information from a person without this special right of access, the sheriff should again request an opinion from this office.

³ As our ruling is dispositive, we need not address the sheriff's remaining claims, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID# 405904

Enc. Submitted documents

c: Requestor
(w/o enclosures)