



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

Mr. David A. Mendoza
Assistant District Attorney
Hays County
110 East Martin Luther King Drive
San Marcos, Texas 78666

OR2011-01890

Dear Mr. Mendoza:

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# 408490.

The Hays County Sheriff's Office and Hays County District Attorney's Office (collectively the "county") received two requests from three different requestors for information pertaining to a specified offense report. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 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." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in part as follows:

(a) Except as provided by Section 261.203, the 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 [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We note the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes Penal Code section 21.11 as person under 17 years of age). Thus, we find the submitted information is generally confidential under section 261.201(a). We note that two of the requestors are the parents of the child victims listed in the submitted report and the third requestor is the attorney for the father. Further, these individuals are not alleged to have

committed the suspected abuse. Therefore, the county may not withhold the submitted information from any of these requestors on the basis of section 261.201(a). Fam. Code § 261.201(k). However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your arguments under section 552.101 in conjunction with section 58.007 of the Family Code and section 552.108 of the Government Code for this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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 id.* § 51.02(2). 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, 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 agree that the submitted information involves juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Accordingly, the submitted information must be withheld from the mother of the alleged victims under section 552.101 in conjunction with section 58.007(c) of the Family Code.

We note, however, one of the requestors is not only the father of the alleged victims, but may also be the guardian of the juvenile offender involved. As noted above, the third requestor is this individual’s attorney. Under section 58.007(e), a child’s guardian has a right to inspect or copy law enforcement records concerning that child. *See id.* § 58.007(e). Therefore, we must rule in the alternative as to the remaining two requestors. If the father of the alleged victims is not also the guardian of the listed juvenile offender, then the county must withhold the submitted information in its entirety from him and his attorney under section 552.101 in conjunction with section 58.007(c) of the Family Code. Alternatively, if this requestor is the juvenile offender’s guardian, he and his attorney have a right to inspect the submitted information under section 58.007(e). *See id.* § 58.007(e). However, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Therefore, in the event that these two requestors have a right of access to the submitted information under section 58.007(e), we will address your remaining claim under section 552.108 of the Government Code.

We note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(17). We have marked court filed documents that are subject to section 552.022(a)(17). Although you seek to withhold these court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court documents may not be withheld under section 552.108 and must be released to the two requestors with a right of access under section 58.007(e).

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending prosecution. Based upon your representation and our review, we find that section 552.108(a)(1) is applicable to the remaining information. *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).

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*. *See* 531 S.W.2d at 186-87; 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 information and court filed documents we have marked, the county may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.¹

In summary, the county must withhold the submitted information in its entirety from the mother of the alleged victims under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the father of the alleged victims is not the guardian of the juvenile offender at issue, then the county must also withhold the submitted information in its entirety from this requestor and his attorney under section 552.101 in conjunction with section 58.007(c) of the Family Code. However, if the father of the alleged victims is also the guardian of the juvenile offender involved, then, with the exception of the basic information and court filed documents, the county may withhold the submitted information from this requestor and his attorney under section 552.108(a)(1) 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,

¹We note that if one of the requestors is a guardian of the juvenile offender, this requestor and his attorney has a special right of access to the information being released. Because such information is confidential with respect to the general public, if the county receives another request for this information from a different requestor, the county must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Debbie K. Lee", with a long horizontal flourish extending to the right.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 408490

Enc. Submitted documents

c: Requestors
(w/o enclosures)