



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Mr. Steven Haas
Records Coordinator
Burleson Police Department
225 West Renfro
Burleson, Texas 76028-4261

OR2012-07614

Dear Mr. Haas:

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# 454319 (Burleson #184).

The Burleson Police Department (the "department") received a request for information pertaining to the requestor's daughter during a specified period of time. You claim 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.

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 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, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 reads as follows:

(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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2). We have reviewed the submitted information and find supplemental report number 11001652 involves a juvenile runaway. Thus, this information involves a juvenile engaged in conduct indicating a need for supervision and is subject to section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). We note that the requestor is the mother of the juvenile runaway listed in supplemental report number 11001652. Under section 58.007(e), the requestor may inspect or copy law enforcement records concerning her child. *See id.* § 58.007(e). Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other

law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your argument under section 552.108 of the Government 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 the 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 supplemental report number 11001652 pertains to a pending criminal investigation being conducted by the Dallas Police Department (the “DPD”). However, you have not provided a representation from the DPD that it seeks to withhold the information at issue because the information relates to a pending criminal investigation and the release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold any of supplemental report number 11001652 under section 552.108.

We note the remaining submitted information is subject to section 261.201 of the Family Code. Section 552.101 also encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

[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 . . . 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[.]

Id. § 261.201(a), (k), (l)(2). Upon review, we find the remaining submitted information constitutes files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1)(G), (K) (definition of abuse includes the offenses of compelling prostitution of a child and sexual performance of a child); *see also id.* § 101.003(a) (defining “child” as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note, however, the requestor is the parent of the child victim. Further, the requestor is not alleged to have committed the suspected abuse. Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(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(l)(2). Therefore, we will consider your argument under section 552.108(a)(1).

As noted above, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. As you have not provided a representation from the DPD that it seeks to withhold the information, the department may not withhold any of the remaining information at issue under section 552.108.

We note a portion of the submitted information may be subject to section 552.1175 of the Government Code.¹ Section 552.1175 provides in relevant part:

(a) This section applies only to:

¹The Office of the Attorney General 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).

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her own personal funds. The submitted information contains the cellular telephone number of a peace officer. Upon review, we find that to the extent the officer concerned paid for the cellular telephone number we have marked with personal funds and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code. However, the department may not withhold the cellular telephone number we have marked under section 552.1175 if the officer concerned did not pay for the cellular telephone service with personal funds or makes no election under section 552.1175(b). The remaining 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

²We note the information being released contains confidential information to which the requestor has a right of access as the child's parent. *See* Fam. Code §§ 58.007(e), 261.201(k). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office.

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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 454319

Enc. Submitted documents

cc: Requestor
(w/o enclosures)