



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2013

Ms. Jessica D. Richard  
Assistant City Attorney  
Office of the City Attorney  
City of New Braunfels  
P.O. Box 311747  
New Braunfels, Texas 78131

OR2013-00219

Dear Ms. Richard:

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# 477044.

The New Braunfels Police Department (the "department") received a request for all incident reports listing a deceased individual as a complainant, witness, or suspect. 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 made confidential by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part 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.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct in need of supervision” for purposes of title 3 of the Family Code). 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find Exhibit C reflects allegations of a juvenile engaged in delinquent conduct occurring after September 1, 1997. Although the juvenile suspect to whom these records relate is deceased, section 58.007 is not solely intended to protect the privacy interests of juveniles. Therefore, the juvenile suspect’s death does not remove information relating to the deceased juvenile from the ambit of section 58.007(c). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>1</sup>

Section 552.101 of the Government Code 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). Upon review, we find Exhibit E relates to an investigation of alleged or suspected child abuse conducted by the department. *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of indecency with a child under Penal Code § 21.11); *see also* Penal Code § 21.11(a) (defining child, for purposes of offense of indecency with a child, as person younger than 17 years of age). Therefore, we find Exhibit E is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state Exhibit D pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude that section 552.108(a)(2) is generally applicable to Exhibit D.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front page” 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’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information must be released, even if it does not literally appear on the front page of the report and includes, among other things, a detailed description of the offense. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information, which the department must release, the department may withhold Exhibit D under section 552.108(a)(2) 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 477044

Enc. Submitted documents

c: Requestor  
(w/o enclosures)