



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2013

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-10414

Dear Ms. Russell:

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# 490722.

The City of Southlake (the "city"), which you represent, received six requests for information pertaining to six specified incidents. You state you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ 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.

¹We note, effective May 18, 2013, the Texas legislature amended section 552.130 of the Government Code to allow a governmental body to redact the information described in subsection 552.130(a)(2) without the necessity of seeking a decision from the attorney general. Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). Thus, a governmental body may begin redacting information subject to subsection 552.130(a)(2) with respect to requests for information received by the department on or after May 18, 2013. However, if a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. See *id.* § 552.147(b).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the request for information because they were created after the request was received. This ruling does not address the public availability of information that is not responsive to the request, and the city is not required to release non-responsive information in response to the request.

Next, we note the submitted information includes documents filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.108 of the Government Code, this 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 does not make information confidential under the Act. Therefore, the court-filed documents we have marked may not be withheld under section 552.108. However, as you raise section 552.101 of the Government Code for some of the court-filed documents, which makes information confidential under the Act, we will address its applicability to the court-filed document subject to section 522.022(a)(17). Further, we will address your arguments against disclosure of the remaining 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 section 58.007 of the Family Code, which 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.

Fam. Code § 58.007(c). You contend the information in Exhibits B-1 and B-3 is confidential under section 58.007(c) of the Family Code. Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of section 58.007(c) of Family Code). Upon review, we agree the information at issue involves juvenile delinquent conduct that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 apply to the information at issue. Accordingly, the city must withhold Exhibits B-1 and B-3 under section 552.101 in conjunction with section 58.007(c) of the Family Code.²

Section 552.101 of the Government Code encompasses section 261.201 of the Family Code, which provides in relevant part the following:

(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.

Id. § 261.201(a). Upon review, we find Exhibit B-2 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Therefore, we conclude Exhibit B-2 is confidential under

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.³

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. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information in Exhibit B-4 relates to a criminal investigation that ended in a result other than conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the information not subject to section 552.022 in Exhibit B-4.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of the basic information, the department may withhold the information not subject to section 552.022 in Exhibit B-4 under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Open Records Decision No. 565 at 7 (1990). *See also generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. We note, however, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in criminal justice system). Additionally, we note CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). Upon review, we find the city must withhold the information we have marked in Exhibit B-5 under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. However, we find you have failed to demonstrate any of the remaining information in Exhibit B-5 constitutes CHRI for the purposes of chapter 411 or federal law. Thus, none of the remaining information in Exhibit B-5 may be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). Upon review, we find the city must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the city must withhold Exhibits B-1 and B-3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the information in Exhibit B-4 not subject to section 552.022 of the Government Code under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code. The remaining responsive information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen J. Santos". The signature is fluid and cursive, with the first name being the most prominent.

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 490722

Enc. Submitted documents

c: Requestor
(w/o enclosures)