



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2014

Ms. Jennifer DeCurtis  
Assistant City Attorney for the City of Murphy  
Messer, Rockefeller, & Fort, PLLC  
6351 Preston Road, Suite 350  
Frisco, Texas 75034

OR2014-09919

Dear Ms. DeCurtis:

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# 529302.

The City of Murphy (the "city"), which you represent, received a request for reports regarding a specified individual. 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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a).<sup>1</sup> Incident Report No. 14005921 pertains to an investigation of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine Incident Report No. 14005921 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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 when the conduct occurred. *See* Fam. Code § 51.02(2). Section 58.007 of the Family Code provides in 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.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

...

(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[.]

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

Fam. Code § 58.007(c), (e), (j). Arrest Report No. 14000042 involves allegations of juvenile conduct in violation of a penal statute that occurred after September 1, 1997. Thus, this information is generally confidential under section 58.007(c). We note that the requestor represents the parents of the juvenile offender listed in the report. Therefore, the requestor has a right to inspect juvenile law enforcement records concerning the juvenile child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Section 58.007(j)(2) provides, however, 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 claims under sections 552.101 and 552.108(a)(1) 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 must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the information at issue would interfere with a pending criminal prosecution. Based on your representations, we conclude section 552.108(a)(1) is applicable to Arrest Report No. 14000042. *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 186-88; see also Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, you may withhold Arrest Report No. 14000042 based on section 552.108(a)(1) of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Upon review, we agree portions of the basic information in Arrest Report No. 14000042 are highly intimate or embarrassing and of no legitimate public interest. However, the requestor represents the parents of the minor with the privacy interest and thus has a special right of access to information that would ordinarily be withheld to protect the child’s common-law privacy interests. See Gov’t Code § 552.023(a) (person or a person’s authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, none of the basic information in Arrest Report No. 14000042 may be withheld under section 552.101 on the basis of common-law privacy.

In summary, the city must withhold Incident Report No. 14005921 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the city may withhold Arrest Report No. 14000042 under section 552.108(a)(1) of the Government Code. The remaining information must be released.<sup>2</sup>

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<sup>2</sup> We note the requestor has a special right of access under section 58.007 of the Family Code to the information being released. See Fam. Code §58.007(e). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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](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 "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/eb

Ref: ID#529302

Enc. Submitted documents

c: Requestor  
(w/o enclosures)