



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2014

Mr. Matthew L. Grove
Assistant Fort Bend County Attorney
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2014-18385

Dear Mr. Grove:

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# 539200.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information concerning a specified complaint and for reports concerning a specified address. You indicate the sheriff's office will release some of the information. 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides:

(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.

Id. § 58.007(c), (e). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at time of reported conduct). Report number 98-1775 involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Although the requestor is a parent of the child listed in the report, the child is now an adult. Accordingly, the requestor no longer has a right of access to the information at issue pursuant to section 58.007(e). *See id.* § 58.007(e). We conclude the sheriff’s office must withhold report number 98-1775 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 48.101 of the Human Resources Code, which provides:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)–(b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency.¹ *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a police department or sheriff’s office generally are not subject to section 48.101. You contend report number 14-20905 is confidential under section 48.101. We note, however, the report reflects it was created by the sheriff’s office. Although you state a referral was made to Adult Protective Services (“APS”) of the DFPS, you have not demonstrated the information at issue was used or developed in an investigation by APS under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Thus, you have failed to demonstrate report number 14-20905 pertains to an investigation conducted by an entity authorized to conduct such an investigation under chapter 48. Accordingly, the sheriff’s office may not withhold report number 14-20905 under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources 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 state report numbers 12-19751 and 14-20905 relate to active criminal investigations and release of this information would interfere with those investigations. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to report numbers 12-19751 and 14-20905.

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)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state report numbers 02-11135, 08-26790, and 12-1621 relate to investigations that have concluded and

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

did not result in a conviction or deferred adjudication. Based on these representations, we conclude section 552.108(a)(2) of the Government Code is applicable to report numbers 02-11135, 08-26790, and 12-1621.

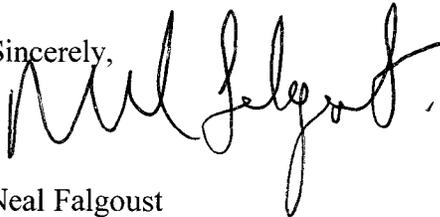
However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold report numbers 12-19751 and 14-20905 under section 552.108(a)(1) of the Government Code and report numbers 02-11135, 08-26790, and 12-1621 under section 552.108(a)(2) of the Government Code.²

In summary, the sheriff's office must withhold report number 98-1775 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the sheriff's office may withhold report numbers 12-19751 and 14-20905 under section 552.108(a)(1) of the Government Code and report numbers 02-11135, 08-26790, and 12-1621 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

²As our ruling is dispositive, we do not address your remaining argument against disclosure.

Ref: ID# 539200

Enc. Submitted documents

c: Requestor
(w/o enclosures)