



January 27, 2015

Mr. Matt Ribitzki  
Deputy City Attorney  
Burleson Police Department  
City of Burleson  
225 West Renfro  
Burleson, Texas 76028

OR2015-01539

Dear Mr. Ribitzki:

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# 551460.

The City of Burleson (the "city") received a request for the full reports, including officer narratives, for two specified cases. We understand the city has released some of the requested 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, 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 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, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, 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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information consists of reports of alleged or suspected child abuse by the city's police department that are subject to chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 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). However, we note the requestor is a parent of the child victim listed in report number 14-003444 and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), report number 14-003444 may not be withheld from this requestor on the basis of section 261.201(a). Further, the requestor is a step-parent of the child victim listed in report number 14-003434 and is not alleged to have committed the abuse. As such, this requestor may have a right of access to report number 14-003434 pursuant to section 261.201(k). *See id.* § 261.201(k). Therefore, we must rule conditionally. If the requestor is not a managing

conservator or legal representative of the child victim in report number 14-003434, then report number 14-003434 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. If the requestor is the child victim's managing conservator or legal representative, then the city may not use section 261.201(a) to withhold this information from the requestor. Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, in the event the requestor does have a right of access to report number 14-003434 pursuant to section 261.201(k), we will consider your argument under section 552.108 for report number 14-003434. We will also consider the applicability of other exceptions to disclosure for report number 14-003444.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code § 51.03(a) (defining "delinquent conduct"). Section 58.007 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.

...

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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 report number 14-003444 involves a juvenile accused of delinquent conduct that occurred after September 1, 1997. As such, this information is subject to section 58.007(c). Although the requestor is the parent of the juvenile suspect in report number 14-003444, the juvenile suspect is now an adult. Accordingly, the requestor no longer has a right of access to report number 14-003444 pursuant to section 58.007(e). *See id.* § 58.007(e). It does not appear any of the exceptions to confidentiality under section 58.007 apply to this information. Accordingly, the city must withhold report number 14-003444 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>1</sup>

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(a)(1) 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). Your inform us report number 14-003434 pertains to an active criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, we note 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic

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

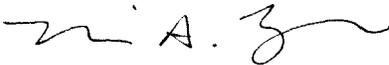
information). Thus, with the exception of basic information, the city may withhold report number 14-003434 under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not the managing conservator or legal representative of the child victim listed in report number 14-003434, then the city must withhold report number 14-003434 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the managing conservator or legal representative of the child victim in report number 14-003434, then, with the exception of basic information, which must be released, the city may withhold report number 14-003434 under section 552.108(a)(1) of the Government Code. The city must withhold report number 14-003444 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAYcbz

Ref: ID# 551460

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

