



February 2, 2015

Ms. Doris Preusse
Senior Records Clerk
Central Records
City of Pflugerville
P.O. Box 679
Pflugerville, Texas 78691

OR2015-02031

Dear Ms. Preusse:

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# 552262 (Reference # W001719-110914).

The Pflugerville Police Department (the "department") received a request for all incident reports initiated by the requestor. You state the department has provided some of the requested information to the requestor. You claim the remaining requested 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.

Initially, we note some of the submitted reports are not responsive to the request because the reports were not initiated by the requestor, as specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

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 exception encompasses information made confidential 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 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 . . . 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). We note the submitted information pertaining to case number 08070264 was used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also 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 disabilities of minority removed for general purposes). Upon review, we find the information at issue is generally confidential under section 261.201 of the Family Code. The requestor, however, is a parent of the child victim listed in the information, and the requestor is not suspected of having committed the alleged abuse. In this instance, the department may not use section 261.201(a) to withhold the information pertaining to case number 08070264 from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You indicate the information pertaining to

case number 08070264, along with some of the remaining information, is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We will, therefore, consider the applicability of section 58.007 to the information at issue.

Section 552.101 of the Government Code also 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.

Id. § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the information pertaining to case number 08070264 involves juvenile delinquent conduct that occurred after September 1, 1997. Further, it does not appear any of the exceptions in section 58.007 apply to this information. Therefore, the department must withhold the information pertaining to case number 08070264, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Although you assert some of the remaining information is confidential under section 58.007, we find this information does not involve juveniles as suspects or offenders for purposes of section 58.007. Accordingly, we find you have not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information. Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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(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)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted incident report numbers 09110241, 11030454, and 11120575 pertain to open criminal cases that are pending court. Based on your representation, we conclude 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 incident report numbers 09110241, 11030454, and 11120575.

However, as you acknowledge, 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 information). Thus, with the exception of basic information, which you state has been provided to the requestor, the department may withhold incident report numbers 09110241, 11030454, and 11120575 under section 552.108(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

We note some of the remaining information is subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail

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

²We note the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

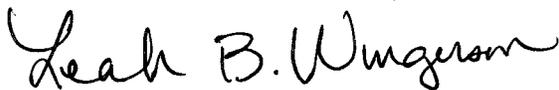
addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which you state has been provided to the requestor, the department may withhold incident report numbers 09110241, 11030454, and 11120575 under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure. The department must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 552262

Enc. Submitted documents

c: Requestor
(w/o enclosures)