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ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. James McKechnie
Assistant City Attorney II
Office of the City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307-1431

OR2015-10206

Dear Mr. McKechnie:

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# 565198 (City ID# 177).

The City of Wichita Falls (the "city") received a request for a list of homicides in the city during a specified time period. The city states it has provided some of the requested information to the requestor. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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). Upon review, we find most of the information the city has marked was used or developed in investigations of alleged or suspected child abuse or neglect; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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 the city does not indicate the city’s police department 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, with the exception of the information relating to report number 14-111026, the information the city has marked is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Therefore, with the exception of the information relating to report number 14-111026, the city must withhold the information it has marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note, however, the information relating to report number 14-111026 pertains to an investigation of alleged or suspected child abuse or neglect that occurred in a child care facility. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. Fam. Code § 261.201(h). We are unable to determine if the child care facility at issue is regulated under chapter 42. Thus, we must rule conditionally. If the child care facility is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the city must withhold the information relating to report number 14-111026 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the child care facility at issue is regulated under chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to the information relating to report number 14-111026, and the city may not withhold it under section 552.101 on that basis. In that instance, we will address the city’s argument under section 552.108 of the Government Code for the information relating to report number 14-111026.

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). The city states the

information relating to report number 14-111026 relates to a pending criminal prosecution. Upon review, 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 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.

Section 552.108, however, 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 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information relating to report number 14-111026 under section 552.108(a)(1) of the Government 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(c). Section 58.007 provides, in pertinent part, as follows:

(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). 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 id.* § 51.02(2). Upon review, we conclude the information we have marked consists of law enforcement records involving juvenile delinquent conduct occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the information we have marked is confidential under

section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

In summary, with the exception of the information relating to report number 14-111026, the city must withhold the information it has marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the child care facility at issue in report number 14-111026 is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the city must withhold the information relating to report number 14-111026 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the child care facility at issue is regulated under chapter 42 of the Human Resources Code, then with the exception of basic information, the city may withhold the information relating to report number 14-111026 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 565198

Enc. Submitted documents

c: Requestor
(w/o enclosures)