



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. Maxwell Branham
Assistant City Attorney
City of San Angelo
Office of the City Attorney
72 West College Avenue
San Angelo, Texas 76903

OR2015-10264

Dear Mr. Branham:

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# 564821.

The San Angelo Police Department (the "department") received a request for information pertaining to a specified incident and a specified location. You state the department has released some of the requested information. We understand the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

²Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

public disclosure of “information that is also contained in a public court record,” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the court-filed documents we have marked may not be withheld under section 552.108. As you raise no further exceptions to disclosure of this information, the department must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure for the remaining information.

Section 552.101 of the Government Code excepts from public 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 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.

Fam. Code § 261.201(a). Upon review, we find Exhibit F relates to an investigation of alleged or suspected child abuse conducted by the department. *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) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude Exhibit F is confidential pursuant to section 261.201(a) of the Family Code, and

the department must withhold it under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which protects juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) reads 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find call for service report number 2010041579 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must withhold call for service report number 2010041579 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁴

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state, and provide documentation showing, the information submitted as Exhibits C, C-1, C-2, C-3, C-4, and C-5 relates to an ongoing criminal investigation. Based on these representations, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is generally applicable to this information. We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1).

Section 552.108(a)(2) 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 information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You inform us the remaining information in Exhibits D and E pertains to criminal cases that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, the identity of the arrestee. *See* ORD 127 at 3-4. Thus, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information in Exhibits C, C-1, C-2, C-3, C-4, and C-5 under section 552.108(a)(1) of the Government Code and the remaining information in Exhibits D and E under section 552.108(a)(2) of the Government Code.⁵

In summary, the department must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. The department must withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 261.201(a) of

⁵As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

the Family Code and call for service report number 2010041579 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the department may withhold the remaining information in Exhibits C, C-1, C-2, C-3, C-4, and C-5 under section 552.108(a)(1) of the Government Code and the remaining information in Exhibits D and E under section 552.108(a)(2) of the Government Code.⁶

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 564821

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).