



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2015

Mr. Gregory L. Grigg
Chief of Police
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536

OR2015-18433

Dear Mr. Grigg:

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# 577926 (Deer Park Reference# 2015-1523).

The Deer Park Police Department (the "department") received a request for all reports regarding a named individual for a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(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, 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.

Fam. Code § 261.201(a), (k). Report numbers 15-00205, 15-01669, and 15-02265 were used or developed in investigations by the department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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 the disabilities of minority removed for general purposes). Thus, we find these reports are subject to section 261.201. In report numbers 15-01669 and 15-02265, although the requestor is a parent of the child victim listed in the information, the requestor is suspected of having committed the alleged or suspected abuse or neglect. Therefore, this information may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k). Accordingly, the department must withhold report numbers 15-01669 and 15-02265 under section 552.101 of the Government Code in conjunction with section 261.201.¹ Moreover, report number 15-00205 is within the scope of section 261.201(a), and there is no indication the requestor has a right of access. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, we determine report number 15-00205 is confidential pursuant to section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Thus, the department must withhold report number 15-00205 in its entirety under section 552.101 in conjunction with section 261.201(a).²

¹As our ruling is dispositive as to this information, we need not address your remaining arguments against disclosure.

²As our ruling is dispositive as to this information, we need not address your remaining arguments against disclosure.

Next, we note report number 15-02082 involves an alleged violation of section 32.51 of the Penal Code, which provides, “[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person’s consent[.]” Penal Code § 32.51(b)(1). For purposes of section 32.51, “identifying information” includes an individual’s name and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005, and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim’s request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no “element of the offense occurs before that date.” Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the information at issue pertains to a report of fraud and debit card abuse, which constitutes an alleged violation of section 32.51. We note the requestor is the victim of the alleged identity theft listed in the report, and the alleged offense occurred after September 1, 2005. Therefore, the submitted report is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent it contains confidential information. *See* Crim. Proc. Code art. 2.29. Although you seek to withhold the report under section 552.108 of the Government Code, this exception does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, report number 15-02082 may not be withheld from this requestor under section 552.108 of the Government Code. However, because section 552.101 of the Government Code applies to confidential information and because section 552.130 of the

Government Code makes information confidential, we will address the applicability of these exceptions to report number 15-02082.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in pertinent 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining

“delinquent conduct”). 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 conduct at issue. *See id.* § 51.02(2). Report numbers 2014-377669 and 15-02082 involve a child engaged in delinquent conduct that occurred after September 1, 1997. As such, these reports are subject to section 58.007(c). However, you state, and the submitted information reflects, the requestor is a parent of the juvenile offender. Therefore, in accordance with section 58.007(e), the department may not use section 58.007(c) to withhold this information from this requestor. *See id.* § 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your argument under section 552.108 of the Government Code for report number 2014-377669 and your argument under section 552.130 of the Government Code for report number 15-02082.

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). You state report number 2014-377669 pertains to a criminal case that is currently pending investigation. Based on this representation, we conclude the release of report number 2014-377669 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). Accordingly, the department may withhold the information you have marked in report number 2014-377669 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code 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. Report number 15-02082 contains motor vehicle record information subject to section 552.130. However, we note the motor vehicle record information at issue belongs to the minor child of the requestor. Section 552.130 is designed to protect the privacy of individuals. Thus, pursuant to section 552.023 of the Government Code, this requestor has a right of access to information pertaining to her minor child, and the department may not withhold the motor vehicle record information at issue under section 552.130 of the Government Code. *See id.* § 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). Because there are no other exceptions to

disclosure raised for report number 15-02082, the report must be released to this requestor in its entirety.

In summary, the department must withhold report numbers 15-02205, 15-01669, and 15-02265 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you have marked in report number 2014-377669 under section 552.108(a)(1) of the Government Code. The remaining information must be released.³

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 577926

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access beyond that of the general public to the information being released. See Crim. Proc. Code art. 2.29; Fam. Code § 58.007(e); Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.