



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Street
Carrollton, Texas 75006

OR2016-20912

Dear Ms. Brown:

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# 628229 (City ID# 8029).

The City of Carrollton (the "city") received a request for five specified offense reports. You state the city has released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have neither informed us offense report number 2016-001099 has been released nor sought to withhold it by submitting it for our review. To the extent such information existed on the date the city received the request, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 encompasses section 58.007 of the Family Code, which makes

confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides, in 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). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at time of reported conduct). Upon review, we find offense report number 2016-000418 involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear any of the exceptions in section 58.007 apply. Accordingly, report number 2016-000418 is confidential under section 58.007(c) of the Family Code and the city must withhold it under section 552.101 of the Government Code.¹

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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

¹This ruling is dispositive of your remaining arguments against disclosure of this information.

(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.

Id. § 261.201(a). You claim offense report number 2016-004469 was used or developed in an investigation of alleged child abuse or child 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 chapter 261). You have not indicated the city’s police department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report number 2016-004469 is confidential under section 261.201 of the Family Code and the city must withhold it under section 552.101 of the Government Code.² The remaining information does not involve an investigation of alleged child abuse or child neglect, so the city may not withhold the remaining information under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code exempts 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 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 the remaining information you marked relates to active criminal prosecutions and release of the information would interfere with detection, investigation, and 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). Based on these representations and our review, we conclude the city may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.³

In summary, the city must withhold report number 2016-000418 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold report number 2016-004469 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. The city must release the remaining information.

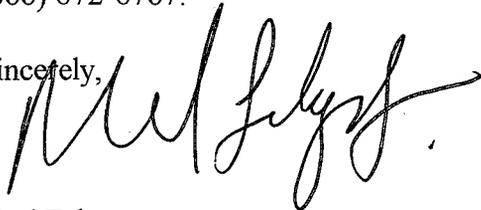
²This ruling is dispositive of your remaining arguments against disclosure of this information.

³This ruling is dispositive of your remaining arguments against disclosure of this 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, sweeping initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 628229

Enc. Submitted documents

c: Requestor
(w/o enclosures)