



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2016

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358

OR2016-27809

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# 639081 (Tracking No. KELS092916).

The Plano Police Department (the "department") received a request for all police reports involving assaults of class B and up for a specified time period. You state you have released some information to the requestor. You claim the submitted 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 representative sample of information.¹

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 information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 Exhibit E 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, Exhibit E 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.²

Section 552.101 also encompasses section 261.201 of the Family Code, which provides 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

²As our ruling is dispositive, we need not address the 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.

Fam. Code § 261.201(a). You state the information in Exhibit D was used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001 (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). Upon review, we agree Exhibit D is within the scope of section 261.201 of the Family Code. Therefore, the department must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

Section 552.108(a) 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). Generally, 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 Exhibits B and C relate to pending criminal investigations. Based upon this representation, we conclude that the release of Exhibits B and C 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).

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold Exhibits B and C from disclosure based on section 552.108(a)(1).

In summary, the department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the

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

basic information, the department may withhold Exhibits B and C from disclosure based on section 552.108(a)(1).

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 639081

Enc. Submitted documents

c: Requestor
(w/o enclosures)