



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-03300

Dear Mr. Kopp:

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# 645727 (COSA File No. W146874).

The City of San Antonio (the "city") received a request for information pertaining to a specified address. 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 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 this chapter and the identity of the person making the report; and

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.

(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 the information you have marked was used or developed in an investigation of alleged or suspected child abuse or neglect. *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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the city 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 the city must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

We note some of the remaining information, which we have marked, may be subject to section 261.201 of the Family Code. However, we are unable to determine the age of the victims in some of the remaining information at issue. Thus, we must rule conditionally. If the information we have marked pertains to incidents involving a victim of alleged or suspected abuse or neglect who was under the age of eighteen at the time of the incident at issue, then the information is subject to section 261.201 of the Family Code. In that case, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the victims in the information at issue were eighteen years of age or older at the time of the incidents, section 261.201 is not applicable to this information. In that instance, we conclude the city may not withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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. *Id.* § 58.007(c). The relevant language of section 58.007 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:

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

(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. 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). The information you have marked involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or 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). Thus, this information is subject to section 58.007(c). In this instance, it does not appear any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the city must withhold the remaining information you have marked in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.³

We note some of the remaining information, which we have marked, may be subject to section 58.007 of the Family Code. However, we are unable to determine the ages of the alleged offenders in the information we have marked. Accordingly, we must rule conditionally. To the extent the information we have marked involves offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information is confidential under section 58.007(c), and the city must withhold it under section 552.101. However, to the extent the offenders at issue were not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the incidents at issue are not confidential pursuant to section 58.007(c) and the city may not withhold the information we marked under section 552.101 on that basis.

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 report numbers 2016-0961923 and 2016-0380217 pertain to pending criminal investigations or

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

prosecutions. Based upon this representation, we conclude that 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 (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). Thus, section 552.108(a)(1) is applicable to report numbers 2016-0961923 and 2016-0380217.

Section 552.108(a)(2) of the Government Code 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 requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 2015-0363634 pertains to a closed criminal investigation that concluded in a result other than conviction or deferred adjudication. Thus, section 552.108(a)(2) is applicable to report number 2015-0363634.

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 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or the identity of the victim, unless the victim is the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold report numbers 2016-0961923 and 2016-0380217 under section 552.108(a)(1) of the Government Code and report number 2015-0363634 under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

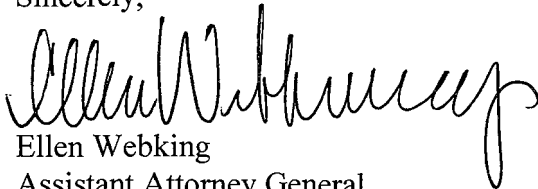
However, none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 on that basis.

In summary, the city must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the information we have marked pertains to incidents involving a victim of alleged or suspected child abuse or neglect who was a under the age of eighteen at the time of the incident at issue, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the remaining information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the information we have marked pertain to offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information 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. With the exception of the basic information, which must be released, the city may withhold report numbers 2016-0961923 and 2016-0380217 under section 552.108(a)(1) of the Government Code and report number 2015-0363634 under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 645727

Enc. Submitted documents

c: Requestor
(w/o enclosures)