



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2017

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

OR2017-05545

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# 649286 (COSA File No. W150021).

The San Antonio Police Department (the "department") received a request for reports pertaining to the requestor and a named individual during a specified time period. You claim the requested 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 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is 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 that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the information you have marked 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.¹

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant 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 Juvenile Justice Department, on request, shall provide to the parent, managing

¹As our ruling on this information is dispositive, we need not address your remaining argument against disclosure.

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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We note some of the submitted information was used or developed in investigations 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). Based on our review, we find report numbers 2014-0886843, 2015-1131237, 2014-1087088, 2014-1171051, and 2014-1221743 are generally confidential under section 261.201 of the Family Code.

In this instance, the requestor is a parent of the child victim listed in report number 2014-0886843. However, the information at issue reflects the requestor is also alleged to have committed the suspected abuse or neglect at issue in this report. Accordingly, this requestor does not have a right of access to report number 2014-0886843 pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude report number 2014-0886843 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.²

We note the requestor is the parent of the child victim listed in report number 2015-1131237, and the parent is not alleged to have committed the suspected abuse or neglect at issue in this report. In this instance, report number 2015-1131237 may not be withheld from this requestor under section 261.201(a). *Id.* In addition, the requestor is the child victim listed

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

in report numbers 2014-1087088, 2014-1171051, and 2014-1221743, and is now an adult. Thus, report numbers 2014-1087088, 2014-1171051, and 2014-1221743 may not be withheld from this requestor under section 261.201(a). *Id.*

However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Further, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You raise section 552.108 of the Government Code as an exception to disclosure. Therefore, we will address the applicability of this section to report numbers 2015-1131237, 2014-1087088, 2014-1171051, and 2014-1221743, as well as the remaining information.

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 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 information you have marked relates to pending criminal investigations. Based upon this representation, we conclude release of the information at issue 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, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the information you have marked.

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 the information you have marked relates to concluded cases that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the information you have marked.

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). 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*). Thus, with the exception of basic information, you may withhold the information you have marked under sections 552.108(a)(1) and 552.108(a)(2) of the


Government Code. However, as previously noted, section 261.201(l)(3) states the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(l)(3). Thus, in releasing basic information from report number 2015-1131237, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold report number 2014-0886843 under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. With the exception of basic information, the department may withhold the information it marked under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. However, in releasing basic information from report number 2015-1131237, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The remaining basic 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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

³Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 649286

Enc. Submitted documents

c: Requestor
(w/o enclosures)