



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2017

Ms. Rachel E. Klaus
Records Technician
Bastrop Police Department
104 Grady Tuck Lane
Bastrop, Texas 78602

OR2017-11082

Dear Ms. Klaus:

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# 658644.

The Bastrop Police Department (the "department") received a request for all information pertaining to a specified address and two named individuals during a certain time period. You state the department will release some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the request for information on February 28, 2017. Because you do not inform this office the department was closed for business any of the days at issue, we find the department's ten-business-day deadline was March 14, 2017. However, the envelope in which you provided the information required by section 552.301(b) was meter-marked March 15, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States Mail, common or contract carrier, or interagency

mail). Thus, we find the department failed to comply with the requirements mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you claim section 552.108 of the Government Code for the submitted information, you have failed to establish a compelling reason to address your claimed exception. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of sections 552.101 and 552.130 to 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 of the Government Code encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads as follows:

(c) Except as provided by [s]ubsection (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.

....

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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 submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred 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). As such, this information constitutes juvenile law enforcement records that are generally confidential pursuant to section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply to incident number 20150821. Accordingly, the department must withhold incident number 20150821 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, in this instance, the requestor is the parent of some of the juvenile offenders at issue in the remaining information. Therefore, this requestor has a right of access to information concerning his minor children under section 58.007(e), and the department may not withhold it from him under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). Nevertheless, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's minor child must be redacted. *See id.* § 58.007(j)(1). Accordingly, within incident number 20161683, the department must withhold any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's minor child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider whether this information is otherwise excepted from disclosure under the Act.

Section 552.101 of the Government Code also encompasses information protected by 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 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

Id. § 261.201(a), (k), (l)(1)-(2). We note incident numbers 20150797 and 20161681 were used or developed in investigations by the department of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information is within the scope of section 261.201(a). There is no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the department must withhold incident number 20150797 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In this instance, however, the requestor is a parent of one of the child victims listed in incident number 20161681 and is not the individual alleged to have committed the suspected abuse or neglect. *See id.* § 261.201(k). Thus, the information at issue may not be withheld from this requestor on the basis of section 261.201(a). Section 261.201(l)(1), however, states the identity of a victim or witness under eighteen years of age who is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld. *Id.* § 261.201(l)(1). Thus, the department must withhold the personally identifiable information in incident number 20161681 about a child victim or witness who is not the requestor’s minor child under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. *Id.* Furthermore, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether this information is otherwise excepted from disclosure under the Act.

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. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold incident number 20150821 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Within incident number 20161683, the department must withhold any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s minor child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold incident number 20150797 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Within incident number 20161681, the department must withhold the personally identifiable information about a child victim or witness who is not the requestor’s minor child under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must

withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 658644

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released. *See* Fam. Code §§ 58.007(e), 261.201(k); *see also* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).