



November 3, 1999

Lieutenant Arturo Valdez
Central Record Division
McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR99-3109

Dear Lieutenant Valdez:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. You submitted several requests for decisions all dated September 13, 1999, which pertain to a single public information request to your office. All of your requests have been consolidated under ID# 129592.

The McAllen Police Department (the "department") received a request for all incident reports relating to a particular address. You claim the requested information is excepted from disclosure under section 51.14(d) of the Texas Family Code and section 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." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. You cite to section 51.14(d) of the Family Code in your request for a decision. However, that provision only applies to offenses committed by juveniles prior to January 1, 1996. Section 58.007 of the Family Code applies to offenses committed by juveniles on or after September 1, 1997. Therefore, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential and protected from public disclosure under section 58.007. The relevant language of section 58.007(c), as amended, 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:

- (1) if maintained on paper or microfilm, kept separate from adult files and records; and
- (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 Subchapter B.

Act of May 25, 1999, 76th Leg., R.S., ch. 815, § 1, 1999 Tex. Sess. Law Serv. 3448 (Vernon) (to be codified as an amendment to Family Code §58.007(c)). Offense report number 99-007777 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, offense report number 99-007777 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure under section 552.101 of the Government Code.

With regard to your section 552.108 assertion, section 552.108 of the Government Code, excepts from required public disclosure:

(a) Information 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;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Because you have informed us that some of the records at issue pertain to pending criminal investigations, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You therefore may withhold most of the requested information at this time pursuant to section 552.108(a)(1).

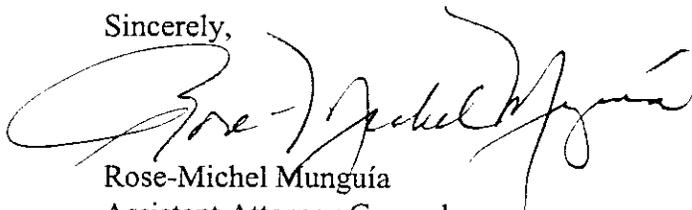
Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The department must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Record Decision No. 127 (1976). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Lastly, we note that you did not submit offense report numbers 99-27099 and 9925728. Pursuant to section 552.301(e), a governmental body is required to submit to this office

within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4508 (Vernon) (to be codified as an amendment to Gov't Code § 552.301(e)). You did not comply with section 552.301(e) because you did not submit offense reports 99-27099 and 99-25728. Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to Gov't Code § 552.302). Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information in offense report numbers 99-27099 and 99-25728. However, distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/ch

Ref: ID# 129592

Encl. Submitted documents

cc: Ms. Maria T. Oliveras
P. O. Box 3643
McAllen, Texas 78504
(w/o enclosures)