



December 22, 1999

Mr. Jack Harwell
Sheriff
McLennan County, Texas
219 North 6th Street
Waco, Texas 76701-1363

OR99-3733

Dear Mr. Harwell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130544.

The McLennan County Sheriff's Department (the "department") received a request for information from Gerald L. Bolfig, an attorney, regarding reports and/or records relating to various specified incidents or persons centering around a juvenile home. You have provided copies of the information in the possession of the department that is responsive to the request, and you indicate the department has no information regarding any incidents on seventeen of the dates specified in the request. You have released two of the requested reports. You assert that the remaining information, provided for our review and marked by you as exhibits "B" through "K," 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 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Regarding exhibits "B," "C," and "D," you inform us that the requested information pertains to cases in which an investigation is active and open. Our review of those documents indicates this to be the case. We therefore believe that the release of some 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court

delineates law enforcement interests present in active cases). However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of any basic front page offense and arrest report information, the department may withhold the requested information in exhibits "B," "C," and "D" from disclosure based on section 552.108(a)(1). Although section 552.108(a)(1) authorizes you to withhold the remaining information in these exhibits from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Regarding exhibits "E," "F," "G," "I," "J," and "K," you assert, *inter alia*, that the information requested is excepted from required public disclosure by section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 58.007(c) of the Family Code applies to juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) 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;
- (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.

Here, the requested information contained in exhibits "E," "F," "G," "I," "J," and "K" all involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to section 58.007 apply. Thus, the records are made confidential by section 58.007 of the Family Code. Accordingly, except as noted below with reference to exhibit "K," you must withhold this information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Exhibit "K" contains search warrant affidavits. An affidavit to support a search warrant is made public by statute if it has been executed. *See* Code Crim. Proc. art. 18.01(b). Exhibit

“K” also contains an autopsy report. Autopsy reports must be disclosed, in that they are expressly made public by the Code of Criminal Procedure. *See* Code Crim. Proc. art. 49.25, § 11. The Public Information Act’s exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989). Therefore, the department may not withhold these documents from required public disclosure under section 552.101 or 552.108 of the Government Code.¹

Regarding exhibit “H,” you assert that the information requested is excepted from required public disclosure by section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Our review of that information does not indicate the involvement of juvenile conduct at any time. A “child” as defined by section 51.02 of the Family Code is a person who is:

- (A) ten years of age or older and under 17 years of age; or
- (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(1). The missing person you allege was a juvenile in exhibit “H” was seventeen years of age at the time of the incident. Therefore, the city may not withhold this exhibit from the requestor based on section 58.007(c) of the Family Code. Except as noted below, you must release the information in exhibit “H.”

Exhibit “H” contains social security number information. A social security number or “related record” may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

¹The documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.

Exhibit "H" also contains criminal history record information ("CHRI"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

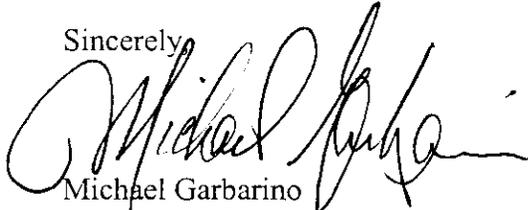
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 130544

Encl. Submitted documents

cc: Mr. Gerald L. Bolfig
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(w/o enclosures)