OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 21, 2001

Ms. Sarajane Milligan
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2001-6046

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158709.

The Harris County Constable Precinct Four (the "constable") received two requests for offense report number 0111182393. You claim that the responsive offense report is excepted from disclosure under section 552.108 of the Government Code and section 58.007 of the Family Code. We have considered the exceptions you claim and have reviewed the documents submitted.

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 statutes such as section 58.007 of the Family Code. Section 58.007 makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. The offense report is not the type of record that section 58.007 covers. Therefore, we conclude that the offense report is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(2) excepts from disclosure information held by a law enforcement agency or prosecutor 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.

Generally, a governmental body claiming an exception under section 552108 must reasonably explain how the exception applies to the information. *See* Gov't Code §§ 552.108(a), (b), .301(b)(1). You state that no charges were filed and the case was closed without a conviction or deferred adjudication. Accordingly, we conclude that section 552.108(a)(2) is applicable to the submitted information.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). 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.

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 Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref.: ID# 158709

Enc. Submitted documents

c: Mr. William L. Campbell
Analytical Engineering Services, Inc.
1404 N. Sam Houston Parkway, E., Ste. 180
Houston, Texas 77032-2958
(w/o enclosures)

Ms. Jeneane Rice
11302 Rocky Mill
Cypress, Texas 77429
(w/o enclosures)