



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 11, 2002

Lieutenant Arturo Valdez
Central Records Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78502-0220

OR2002-7033

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175950.

The McAllen Police Department (the "department") received a request for case # 01-9124. You claim that the requested information is excepted from public disclosure under section 552.108 of the Government Code and section 51.14 of the Family Code. We have considered your claimed exceptions and the submitted information.

Section 51.14 of the Family Code was repealed by the Seventy-fourth Legislature. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). However, section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. However, section 58.007 is inapplicable here because the incident at issue does not involve a suspect or offender who is a "child" as defined by section 51.02 of the Family Code. A "child" 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). Section 58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. See Fam. Code § 51.04(a)(Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). Here, while the witnesses are juveniles,

there is no suspect listed and, thus, no indication that the suspect was a juvenile at the time of the incident. Therefore, the department may not withhold the requested information under section 58.007 of the Family Code.

You also contend that the submitted information is excepted from disclosure under section 552.108 of the Government Code. 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). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 does not except 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), which includes a detailed description of the offense. Thus, with the exception of the basic offense and arrest information, the department may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the department has 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 Department 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 175950

Enc: Submitted documents

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(w/o enclosures)