



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 2, 2003

Mr. Russell W. Malm
County Attorney
Midland County
200 West Wall Street, Suite 104
Midland, Texas 79701

OR2002-0048

Dear Mr. Malm:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174395.

The Midland County Juvenile Probation Department (the "department") received a request for information relating to a juvenile connected with the department and to security measures employed by the department. You state that the department has no information responsive to the request for certain security measures, but will submit information relating to other departmental security measures. You claim that the submitted information 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.

We first address a procedural matter. You state, and we note, that the request is phrased as a series of questions asked of the department. You further indicate that most, but not all of the questions, relate to information contained in department documents. The Public Information Act (the "Act") does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Moreover, the Act applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information). Accordingly, we find that the Act does not require the department to respond

to the request inasmuch as it specifies information that is not contained within department documents. However, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 561 at 8 (1990). You have made such an effort in sending this office material responsive to the parts of the request concerning the juvenile escapee and security measures in effect at the department. Accordingly, we consider your arguments with respect to the submitted information.

Section 552.101 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 section 58.007 of the Family Code. Section 58.007(b) provides as follows:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.007(b). You state that the requested information is contained in department records, and that “[t]he juvenile for whom [the requestor] seeks information is a party to a proceeding under Title 3 of the Texas Family Code.” You further state that the requestor “does not fit within one of the exceptions” to disclosure under section 58.007(b) of the Family Code. Therefore, we conclude that you must withhold the information relating to the juvenile from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

However, section 58.007 does not apply where the information in question does not involve 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, some of the submitted information relates to departmental security measures and does not reference the juvenile at issue. Thus, this information is not excepted from disclosure under section 552.101 in conjunction with section 58.007(b). Accordingly, we turn now to your arguments that the remaining information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.--Austin 2002, no pet. h.); Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986).

This office has concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution). With respect to the remaining submitted information, you state that "[s]ecurity measures at the detention facility are intentionally kept secret," and that disclosing this information "would greatly reduce the effectiveness of the security measures." Specifically, you state that releasing the requested information "would compromise security at the detention facility, increase the risk of escapes, and place at risk the safety of the personnel and juveniles at the detention facility," and could reveal information that inmates could use to escape from the department. After reviewing your arguments and the remaining submitted information, we agree that the public release of some of this information would interfere with law enforcement. *Cf.* Open Records Decision No. 508 (1988) (holding that disclosure of information relating to past transfers of inmates would not unduly interfere with law enforcement). Accordingly, you may withhold from disclosure the information we have marked under section 552.108(b)(1). However, as the release of the remaining information would not interfere with law enforcement or crime prevention, you may not withhold this information under section 552.108(b)(1).

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 58.007(b) of the Family Code. The department may withhold the information we have marked under section 552.108(b)(1). The remaining information must be released to the requestor.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 174395

Enc: Submitted documents

c: Ms. Nora Frost
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(w/o enclosures)