



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2004

Lieutenant Arturo Valdez
Central Records Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2004-1392

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# 196796.

The McAllen Police Department (the "department") received a request for twenty-five offense reports. The department claims the submitted reports are 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.

First, we note the department failed to submit ten of the requested reports. To the extent they exist, the department must release these reports: 03-1911, 03-095, 02-27209, 02-38886, 02-36886, 01-46446, 01-3479, 00-27776, 00-27785 and 00-22275. See Gov't Code §§ 552.301, .302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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. 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.

Report numbers 01-25476, 01-25231, and 01-25221 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information 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.

Section 552.108(a) excepts from disclosure “[i]nformation 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.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that twelve of the requested offense reports relate to pending criminal investigations. Based upon this representation, we conclude that release of eleven of the offense reports would interfere with the investigation 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 that are present in active cases). Thus, the department may withhold the following reports under section 552.108(a)(1): 03-53413, 03-99, 02-54729, 01-29494, 01-29495, 01-14638, 01-3481, 01-1275, 03-6505, 01-3478, and 00-45410..

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. Although section 552.108(a)(1) authorizes you to withhold the eleven reports 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.

As for report number 99-39451, the department also asserts it relates to an ongoing investigation and that its release would interfere with the detection, investigation, or prosecution of this matter. We note, however, that this report involves an allegation of assault that occurred on November 27, 1999. The longest possible statute of limitations for the offense described in this report is three years. *See* Crim. Proc. Code art. 12.01(6) (providing limitation period of three years for any felony offense not listed in subsections one through five). More than three years elapsed between November 27, 1999, and the date you received this request for information, December 5, 2003. You have neither informed this office that any criminal charges were filed within the limitations period nor have you otherwise explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold report number 99-39451 on this basis.

However, report number 99-39451 contains information subject to sections 552.101 and 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a Texas driver's license. Thus, the department must withhold the Texas driver's license number under section 552.130. In addition, the department must withhold the social security number under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The department must release the rest of report number 99-39451.

In summary, the department must withhold three reports under section 58.007 of the Family Code. The department may withhold eleven reports under section 552.108(a)(1) after releasing basic information pursuant to section 552.108(c). As for report number 99-39451, the department must withhold the Texas driver's license number under section 552.130 and the social security number if federal law applies.

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).

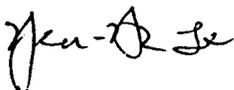
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Pub. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 196796

Enc. Submitted documents

c: Ms. Senaida Perez
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(w/o enclosures)