



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2004

Ms. Mary J. Kayser  
City Secretary  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028-4621

OR2004-4950

Dear Ms. Kayser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203621.

The City of Burleson (the "city") received a request for all information about the arrests of an adult and a juvenile. The submitted information consists of documents, a 9-1-1 audio recording, and a video recording. You claim that the information relating to the juvenile is excepted from disclosure under section 552.101 of the Government Code. You claim that the information relating to the adult is excepted from release under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first examine the submitted information relating to the named adult. We note that the information at issue includes documents that have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). The city must release these documents under section 552.022(a)(17) unless they contain information which is expressly confidential under other law. You claim these documents are excepted from release pursuant to section 552.108 of the Government Code; however, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022. See Open Records Decision No. 177 at 3 (1977) (governmental body may waive law enforcement exception). Therefore, the city may not withhold the marked documents that are subject to section 552.022(a)(17)

under section 552.108. We will address the remaining documents relating to the arrest and detention of the named adult under section 552.108.

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 the information relating to the arrest and detention of the adult relates to a pending criminal investigation. Based upon this representation, we conclude that the release 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 that are present in active cases).

We note, however, that 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 Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The city must release basic information relating to the arrest and detention of the adult to the requestor. The city may withhold the remainder of the information at issue under section 552.108(a)(1) of the Government Code. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

We now address the submitted information which relates to the named juvenile. This information includes documents, a 9-1-1 audio recording, and a video recording. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section 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.

The marked documents and recordings involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the marked documents and recordings from disclosure under section 552.101 of the Government Code.

In summary, the city must release the court filed documents we have marked under section 552.022 of the Government Code. The city must release basic information about the named adult pursuant to section 552.108(c). The city may withhold the remaining information related to the named adult under section 552.108(a)(1). The city must withhold the marked documents and recordings relating to the juvenile under section 552.101 in conjunction with section 58.007 of the Family Code.

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,



W. David Floyd  
Assistant Attorney General  
Open Records Division

WDF/sdk

Ref: ID# 203621

Enc. Submitted documents

c: Mr. Charles Wyche  
601 Oak Street  
Burleson, Texas 76028  
(w/o enclosures)