



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2006

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2006-00823

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 241163.

The Houston Police Department (the "department") received a request for six specified offense reports. You state that the department does not have one of the requested reports.<sup>1</sup> You also state that the department will provide the requestor with some of the requested information, but 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.

You assert that the information in Exhibit 6 is excepted under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and it encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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.

A child, for purposes of section 58.007, is defined as person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Although you assert that the information in Exhibit 6 is confidential under section 58.007, we note that the submitted information indicates that the juvenile at issue was nine years old at the time of the alleged offense; therefore, the information at issue in Exhibit 6 is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it under section 552.101 of the Government Code on that ground.

You assert that the submitted offense reports are excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 2, 3, and 4 relate to inactive criminal investigations that are pending additional leads, but that the statutes of limitations have not run. You explain that “the investigations may be reactivated once additional leads are developed.” Based on this representation, we conclude that the release of these exhibits 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that Exhibits 5 and 6 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to these exhibits.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, you may withhold the submitted information under section 552.108.<sup>2</sup>

You indicate that some of the basic information in Exhibit 5 is excepted under section 552.101 in conjunction with common law privacy. The doctrine of common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. None of the basic information in Exhibit 5 is intimate and embarrassing; therefore, the department may not withhold the basic information in Exhibit 5 under section 552.101 in conjunction with common law privacy.

To conclude, the department must release the basic front-page offense and arrest information in the submitted offense reports; however, it may withhold the remaining information under section 552.108.

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

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<sup>2</sup>Because we are able to resolve this under section 552.108, we do not address your other argument for exception of this information.

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).

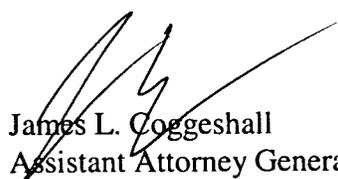
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/er

Ms. YuShan Chang - Page 5

Ref: ID# 241163

Enc. Submitted documents

c: Ms. Carolyn J. Buras  
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Houston, Texas 77040  
(w/o enclosures)