



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2006

Mr. T. Daniel Santee II
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79602-0060

OR2006-01112

Dear Mr. Santee:

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# 241498.

The Abilene Police Department (the "department") received a request for information involving two named individuals, a particular address, and a specified time interval. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007(c) provides 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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code tit. 3). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

You contend that some of the submitted information is confidential under section 58.007(c). Having considered your arguments and reviewed the submitted information, we conclude that the department must withhold all of the information in Exhibits B-1 and B-2 and some of the information in Exhibit B-5 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹ We have marked that information accordingly. We further conclude, however, that none of the remaining information is confidential under section 58.007, and the department may not withhold any of the remaining information on that basis under section 552.101.

Next, we address your claims 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[.]” Gov’t Code § 552.108(a)(1). Section 552.108(a)(1) is applicable when release of the information at issue would interfere with a pending criminal investigation or prosecution. *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). Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in

¹As we are able to make this determination, we do not address your claim under section 552.103 of the Government Code.

relation to an investigation that did not result in conviction or deferred adjudication.[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Under section 552.108(a)(1), you inform us that some of the submitted information relates to a case that has been submitted to the district attorney’s office for potential prosecution. Based on your representations and our review of the submitted information, we find that section 552.108(a)(1) is applicable to all of the information in Exhibit B-4 and the information that we have marked in Exhibit B-3. Under section 552.108(a)(2), you state that some of the submitted information relates to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations and our review of the submitted information, we find that some of the information in Exhibit B-3 relates to that investigation and falls within the scope of section 552.108(a)(2). We have marked that information accordingly. You have not explained, however, and it is not otherwise clear to this office, how or why any of the remaining information at issue relates to the investigation on which you base your claim under section 552.108(a)(2). We therefore conclude that the department may not withhold any of the remaining information under section 552.108(a)(2).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including detailed descriptions of the offenses, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the marked information in Exhibits B-4 and B-3 under section 552.108 of the Government Code.

In summary: (1) the department must withhold Exhibits B-1 and B-2 and the marked information in Exhibit B-5 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; and (2) except for the basic information that must be released under section 552.108(c), the department may withhold the marked information in Exhibits B-4 and B-3 under section 552.108 of the Government Code. The rest of the submitted information must be released.

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).

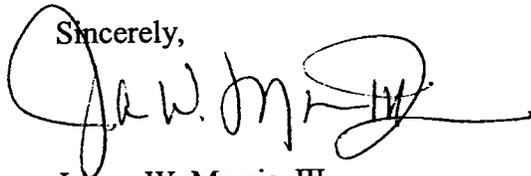
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 241498

Enc: Submitted documents

c: Ms. Miriam T. Ramirez
Route 1, Box 36
Hico, Texas 76347
(w/o enclosures)