



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2007

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2007-11398

Dear Mr. Dodd:

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# 288315.

The Allen Police Department (the "department"), which you represent, received a request for copies of a 9-1-1 tape, a complaint, and for the arrest reports of a named individual. The department indicates that it maintains no information responsive to the 9-1-1 tapes. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a police report, numbered 07027458, and a district attorney case report form. Upon review of the request, it does not appear that the requestor has requested this information. Thus we find that these documents, which we have marked, are not responsive to this request. Because this information is not responsive, it need not be released in response to this request, and we do not address your arguments against its release in this ruling.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes such as section 58.007 of the Family Code. 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.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). We note, however, that section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* § 58.007. The only juvenile listed in the submitted documents is the complainant. The suspect is an individual over seventeen years of age. Therefore, section 58.007(c) of the Family Code does not apply to the complaint or the arrest reports. Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also claim that section 552.108(a)(1) of the Government Code excepts the submitted complaint and arrest report numbers 07003044 and 07012370 from disclosure. 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “releasing the documents would interfere with the further investigation and prosecution of the crime.” The arrest reports pertain to separate incidents unrelated to the complaint and you do not identify which portions of the submitted information the release of which would interfere with a further investigation. Gov’t Code § 552.301(e)(2) (stating that governmental body must properly label submitted information to indicate which exceptions apply). However, included in the submitted documents is a representation from the department itself where they clearly state that the complaint relates to “an open case that has been filed with the District Attorney’s Office.” Based on this representation, we find that the release of the submitted complaint would

interfere with the prosecution of crime and the department may withhold the complaint under section 552.108(a)(1). However, you have failed to show the applicability of section 552.108 to the submitted arrest reports and the department may not withhold arrest report numbers 07003044 and 07012370 under section 552.108(a)(1).

Next, we turn to your claim under section 552.103 of the Government Code for the remaining submitted information. Section 552.103 provides in part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you state that the submitted information pertains to a criminal "case file that the Police Department intends to file, or has already filed with the District Attorney's Office." We note, however, that the department is not a party to this litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Furthermore, you have not provided this office with an affirmative representation from a governmental body with a litigation interest that it seeks to withhold the information at issue pursuant to section 552.103. Therefore, the department may not withhold either of the arrest reports under section 552.103.

We note that arrest report numbers 07003044 and 07012370 include a Texas-issued identification number. Section 552.130 of the Government Code excepts from public

disclosure information that relates to a motor vehicle operator's or driver's license or permit, or a personal identification document issued by an agency of this state. See Gov't Code § 552.130(a)(1), (3). Accordingly, the department must withhold the Texas-issued identification number we have marked under section 552.130.

In summary, the submitted complaint may be withheld under section 552.108(a)(1) of the Government Code. The Texas-issued identification number we have marked must be withheld under section 552.130 of the Government Code. As you raise no other exception to disclosure, the remaining responsive information must be released to the requestor.¹

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).

¹We note that the arrest reports contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 "M. Alan Akin". The signature is fluid and cursive, with a large initial "M" and a stylized "A".

M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 288315

Enc. Submitted documents

c: Ms. Sheila Reyes
P.O. Box 1136
Allen, Texas 75013
(w/o enclosures)