



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2007

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2007-13785

Dear Mr. Lestock:

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# 291121.

The Paris Police Department (the "department") received a request for two specified incident reports, including witness statements and confessions, regarding a named individual. You claim that the requested 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.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706 (Tex.1977). 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. *See Gov't Code § 552.301(e)* (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You inform us that incident report number 200718965 pertains to an open criminal investigation. Based on this representation, we agree that section 552.108(a)(1) is applicable to report number 200718965. You also inform us that incident report number 200710866 relates to a closed case which concluded in final results other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to incident report number 200710866.

We note, however, that the requestor is with the Texas Education Agency (the "TEA") which has assumed the duties of the State Board for Educator Certification. *See Educ. Code § 21.035*. Section 22.082 of the Education Code provides that the TEA "may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21." Act of May 29, 1995, 74th Leg., R.S., ch. 260, 1995 Tex. Gen. Laws 2207, 2285, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 1372, § 6, 2007 Tex. Sess. Law Serv. 4658, 4659. Additionally, section 411.090 of the Government Code specifically grants a right of access for the TEA to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS"). Section 411.090 provides:

(a) The [TEA] is entitled to obtain from [DPS] any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

Gov't Code § 411.090. Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by

that [agency].” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give the TEA a statutory right of access to portions of the submitted information. *See id.*; *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Accordingly, we conclude that the department must release information from incident report number 200718965 to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). We also note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t § 552.108(c). 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.*, 536 S.W.2d 559 (Tex. 1976). Therefore, with the exception of basic and criminal history record information that must be released, the remaining information in incident report number 200718965 may be withheld under section 552.108(a)(1) of the Government Code.

Pursuant to section 22.082, the TEA may also obtain incident report number 200710866 in its entirety because it is a closed criminal investigation file that relates to a specific applicant for or holder of a certificate. *See* Educ. Code § 22.082. You claim, however, that a portion of incident report number 200710866 is confidential under sections 58.005, 58.007, and 58.106 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.” Gov’t Code § 552.101. This section encompasses information that other statutes make confidential. Section 58.005 of the Family Code provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals].” Fam. Code § 58.005(a). In this instance, the information at issue consists of law enforcement records maintained by the department. The department is not the type of facility contemplated by section 58.005(a). Thus, the information at issue is not confidential under section 58.005 of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code. 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, which provides in part:

(a) This section applies only to the inspection and maintenance of a physical record or file concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a physical record or file could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B[.]

...

(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(a), (c). The information at issue in incident report number 200710866 was collected, disseminated, or maintained as provided by Subchapter B. Therefore, section 58.007 is also not applicable to the information at issue. *See id.* § 58.007(a).

Section 552.101 also encompasses section 58.106 of the Family Code. We note that Subchapter B of chapter 58 of the Family Code, which contains section 58.106, pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. Because the records at issue were not requested from the Texas Department of Public Safety, we conclude that section 58.106 of the Family Code is not applicable in this instance. Thus, the department must release incident report number 200710866 in its entirety to this requestor pursuant to section 22.082 of the Education Code.

In summary, the department must release information from incident report number 200718965 to this requestor that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges

and their dispositions. With the exception of basic information, the remaining information in incident report number 200718965 may be withheld under section 552.108(a)(1) of the Government Code. The department must release incident report number 200710866 in its entirety to this requestor under section 22.082 of the Education 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, 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 'A. Meesey', written over a horizontal line.

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 291121

Enc. Submitted documents

c: Mr. Juan Flores, Staff Investigator
Texas Education Agency
Office of Investigations
Educator Certification and Standards
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(w/o enclosures)