



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2007

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2007-14535

Dear Mr. Weir:

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# 293950.

The San Antonio Police Department (the "department") received a request for three specified incident reports. You 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.

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. Section 552.101 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, which provides:

(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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Act of May 29, 1995, 74th Leg., R.S., ch. 262, 1995 Tex. Gen. Laws 2517, 2552-53, amended by Act of May 28, 2007, 80th Leg., R.S., ch. 879, § 1, 2007 Tex. Sess. Law. Serv.1896. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 52.02(2). Upon review, we find that report numbers 06-320840 and 07-629223 are juvenile law enforcement records that pertain to conduct that occurred after September 1, 1997. *See* Fam. Code § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Thus, report numbers 06-320840 and 07-629223 are subject to section 58.007. We note, however, that the requestor appears to be the parent or guardian of the juvenile suspect. The 80th Legislature recently amended section 58.007 to allow the review or copy of juvenile law enforcement records by a child's parent or guardian. *See id.* § 58.007(e). Therefore, to the extent the requestor is the parent or guardian of the juvenile suspect in report numbers 06-320840 and 07-629223, these reports may not be withheld under section 552.101 on this basis. Further, as you claim no other exceptions to disclosure of these reports, if the requestor is the juvenile's parent or guardian, report numbers 06-320840 and 07-629223 must be released to the requestor. However, if the requestor is not the parent or guardian of the juvenile suspect, report numbers 06-320840 and 07-629223 must be withheld in their

entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a) of the Government Code 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.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 of the Government Code 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.2d 706 (Tex. 1977). You state that report number 06-678922 relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of report number 06-678922 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).

However, section 552.108 of the Government Code 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*. *See* 531 S.W.2d at 187; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic front page offense and arrest information, the department may withhold report number 06-678922 based on section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of report number 06-678922 that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, to the extent the requestor is the parent or guardian of the juvenile suspect in report numbers 06-320840 and 07-629223, these reports may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Thus, if the requestor is the juvenile’s parent or guardian, report numbers 06-320840 and 07-629223 must be released to the requestor. If the requestor, however, is not the parent or guardian of the juvenile suspect, report numbers 06-320840 and 07-629223 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic front page offense and arrest information, the department may withhold report number 06-678922 based on section 552.108(a)(1) of the Government 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).

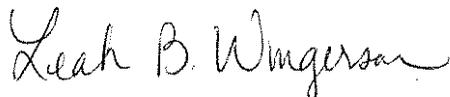
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 293950

Enc. Submitted documents

c: Mr. Luis A. Camacho
8023 Donshire
Converse, Texas 78109
(w/o enclosures)