



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2007

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2007-14662

Dear Mr. Gambrell:

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# 294134.

The Houston Police Department (the "department") received a request for sixty specified incident reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor's attorney. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially we note that portions of Exhibit 2 appear to have been obtained pursuant to a grand jury subpoena and may constitute grand jury records that are not subject to the Act. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.* Thus, to the extent that the records we have identified as subject to article 20.02 are in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and is therefore not subject to disclosure under the Act. However, to the extent that any portion of this information is not in the custody of the department as agent of the grand jury, we will address your claims for Exhibit 2.

Next, we note that Exhibit 7 includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Code Crim. Proc. art. 49.18(b). In 2003, the Office of the Attorney General revised the format of a custodial death report. The attorney general has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the revised report are confidential under article 49.18 of the Code of Criminal Procedure. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Act generally not applicable to information that another statute expressly makes public). In this instance, you have submitted a revised custodial death report. Accordingly, the submitted two-page custodial death report and summary, which we have marked, must be released under article 49.18 of the Code of Criminal Procedure.

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 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). The information in Exhibit 5 consists of law enforcement records of a juvenile who engaged in delinquent conduct after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to the information in Exhibit 5; therefore, Exhibit 5 is confidential under section 58.007(c) of the Family Code. However, the requestor, through his attorney, states that this office has set forth a standard which allows the release of basic information in juvenile law enforcement records. In support of this claim, the requestor’s attorney cites us to Open Records Letter 2007-11944 (2007). In that ruling, this office addressed section 58.007(e), as recently amended, to a situation in which the requestor was the father of an alleged juvenile offender identified in the report. Section 58.007(e) now grants the parent of an identified juvenile a limited right of access to law enforcement records identifying the parent’s child. Act of May 29, 1995, 74<sup>th</sup> Leg., R.S., ch. 262, 1995 Tex. Gen. Laws 2517, 2552-53, amended by Act of May 28, 2007, 80<sup>th</sup> Leg., R.S., ch. 879, § 1, 2007 Tex. Sess. Law Serv. 1896 (Vernon) (to be codified at Tex. Fam. Code § 58.007). In this instance, the requestor is not the parent of the identified juvenile. Therefore, pursuant to section 58.007(e), the requestor “stands on different ground” than the parent of a juvenile identified in a juvenile law enforcement record. Accordingly, we agree that the department must withhold Exhibit 5 in its entirety under section 552.101 in conjunction with the section 58.007(c) of the Family Code.

We note that Exhibits 2, 2-A, and 2-B consist of a report pertaining to child abuse. Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information at issue pertains to a injury to a child investigation in which the child died, thus we conclude that this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (1) (defining “abuse” for the purposes of chapter 261). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that Exhibits 2, 2-A, and 2-B are confidential pursuant to section 261.201 of the Family Code and must be withheld from public disclosure pursuant to section 552.101.

Next, you assert that Exhibits 3, 4, 6, 7, and 7-A are excepted from disclosure under section 552.108. Section 552.108 of the Government Code provides in pertinent 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 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). Generally, 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 id.* §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 7 and 7-A relate to pending criminal investigations, while Exhibit 6 relates to a criminal investigation that is inactive pending additional leads. You also inform us that the statute of limitations has not run on the violation alleged in Exhibit 6 and that this investigation may be reactivated once additional leads are developed. We, therefore, agree that section 552.108(a)(1) is applicable to Exhibits 6, 7, and 7-A. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> 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). You also advise us that Exhibit 3 pertains to a concluded investigation in which charges against the suspect have been dismissed, and that Exhibit 4 pertains to a concluded investigation that was no-billed by the Harris County Grand Jury. Based on your representations, we conclude that section 552.108(a)(2) is applicable to Exhibits 3 and 4.

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 Exhibits 3, 4, 6, 7, and 7-A

from disclosure under section 552.108. Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure.

In summary, to the extent that the information in Exhibit 2 is held by the department as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. You must release the custodial death report that we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure. The department must withhold Exhibit 5 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold Exhibits 2, 2-A, and 2-B under section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold Exhibits 3, 4, 6, 7, and 7-A under section 552.108 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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).

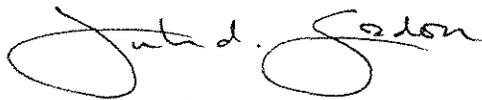
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "Justin D. Gordon". The signature is fluid and cursive, with a large initial "J" and "G".

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 294134

Enc. Submitted documents

c: Mr. Mark Greenblatt  
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Houston, Texas 77019  
(w/o enclosures)