



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Terri Bradley
Records Division
City of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2007-15378

Dear Ms. Bradley:

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# 295625.

The Rosenberg Police Department (the "department") received a request for six specified offense reports involving the requestor and another named individual. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the requested information, incident reports 04-28442 and 05-21495, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-04806 (2006). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2006-04806. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that you have not submitted the requested incident report number 2006-5604 for our review. To the extent incident report number 2006-5604 existed on the date the department received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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, including 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. 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). 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.

Id. § 58.007(c). Upon review, we find that incident report number 2001-00036263 consists of juvenile law enforcement records that pertain to conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that incident report number 2001-00036263 is confidential under section 58.007(c) and must be withheld in its entirety pursuant to section 552.101 of the Government Code.

You claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. This section excepts from public 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). 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). You state that the remaining submitted reports relate to “open and active investigations.” Based on your representation, we conclude that section 552.108(a)(1) is applicable to the remaining submitted information. *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).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the remaining submitted information may be withheld under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold incident report number 2001-00036263 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the remaining submitted information under 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eeg

Ref: ID# 295625

Enc. Submitted documents

c: Ms. Nicole A. Lintz
2702 Calvin Road
Richmond, Texas 77471
(w/o enclosures)