



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 1, 2008

Mr. Kerry O'Brien  
Assistant City Attorney  
Knight & Partners  
Executive Office Terrace  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2008-00311A

Dear Mr. O'Brien:

This ruling examines Open Records Letter No. 2008-00311 (2008) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code.

The Kyle Police Department (the "department"), which you represent, received a request for three specified incident reports. In the department's original request for a decision in this matter, the department claimed that portions of the requested information were confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and all of the requested information was excepted from disclosure under section 552.108. In Open Records Letter No. 2008-00311, we concluded, among other things, that the department waived its section 552.108 claim for one of the requested incident reports because the department had not provided our office with that report. We have re-examined our ruling in Open Records Letter No. 2008-00311 and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 8, 2008.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section 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. 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 § 51.02(2). Section 58.007(c) reads as follows:

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. Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect, offender, or defendant. Upon review, we find that the July 17, 2007 incident report is a juvenile law enforcement record that pertains to conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that this information is confidential under section 58.007(c) and must be withheld pursuant to section 552.101 of the Government Code.<sup>1</sup> The October 5, 2007 incident report, however, does not list a juvenile as a suspect, offender, or defendant. Therefore, the October 5, 2007 incident report is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it under section 552.101 of the Government Code.

You claim section 552.108 for the remaining information. Section 552.108(a)(1) of the Government Code exempts 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[.]" Gov't Code § 552.108(a)(1). Generally, 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.2d 706 (Tex. 1977). You inform us that the October 5, 2007 incident report relates to a pending investigation. Based upon your representation,

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

we find that section 552.108(a)(1) is applicable to the October 5, 2007 incident report. *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.*, 536 S.W.2d 559 (Tex. 1976) (*per curiam*) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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. You state that the September 2, 2007 incident report relates to a criminal investigation that has concluded in a result other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to the September 2, 2007 incident report.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes, among other things, a detailed description of the offense and the identification and description of the complainant. *See Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the October 5, 2007 and September 2, 2007 incident reports under section 552.108 of the Government Code.

In summary, the department must withhold the July 17, 2007 incident report under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the October 5, 2007 incident report under section 552.108(a)(1) and the September 2, 2007 incident report under section 552.108(a)(2).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

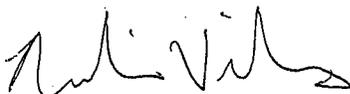
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 305020

Enc. Submitted documents

c: Ms. Priscilla Cruz  
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(w/o enclosures)