



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2008

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2008-04273

Dear Ms. White:

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# 308158.

The City of Southlake (the "city"), which you represent, received two requests for information pertaining to a specified incident: the first requestor asked for the incident report, and all video and audio recordings pertaining to the incident; and the second requestor asked only for dash cam videos, audio recordings, and security video. You state that some of the requested information will be provided to the requestors. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 525.108, and 552.130 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. The relevant language of section 58.007 of the Family Code 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, 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.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, the personally identifiable information concerning the other juvenile arrestees must be redacted pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). In addition, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

The submitted documents contain information that involves juvenile conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. Each requestor is a parent of a different juvenile offender; therefore, information pertaining to each

requestor's child may not be withheld from that requestor under 58.007(c). *See id.* § 58.007(e). However, because you assert that the submitted information is excepted under the informer's privilege, section 552.108 of the Government Code, and section 552.130 of the Government Code, we will consider whether the submitted information is excepted from public release on those grounds. *See id.* § 58.007(j)(2).

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime." 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 Gov't Code* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes a criminal trespass warning. Because a copy of the criminal trespass warning has been provided to the individual subject to the warning, we find that release of the criminal trespass warning will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Therefore, the city may not withhold the criminal trespass warning, which we have marked, under section 552.108(a)(1). You state that the remaining information relates to a pending criminal prosecution. Based on this representation, we conclude that the release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*, and it includes certain identifying information of the arrestee and complainant.

The submitted video is responsive to both requests for information. The video does not constitute basic information; therefore, the city may withhold the video from both requestors under section 552.108(a)(1). With the exception of the marked criminal trespass warning and basic information, the city may withhold the remaining information from the first requestor under section 552.108(a)(1).

The submitted basic information contains the identity of the complainant, which you assert is protected by the common-law informer's privilege.¹ The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *E.g., Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v.*

¹We note that, because the city may withhold the witness's information under section 552.108 of the Government Code, as this information does not constitute basic information, we do not address whether this information is excepted under the informer's privilege.

State, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). You state that the complainant reported a possible violation of the law to the city's police department. Based on these representations, the city must withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with the common-law informer's privilege.

The basic information and the criminal trespass warning, which are only responsive to the first request, also include identifying information of a juvenile offender other than the first requestor's child. Accordingly, in releasing the remaining basic information and the marked criminal trespass warning to the first requestor, the city must redact any personally identifiable information concerning the juvenile offender other than the first requestor's child. See Fam. Code § 58.007(j)(1).

To conclude, the city must release to the first requestor the marked criminal trespass warning and the basic information; however, in releasing the criminal trespass warning and basic information, the city must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege and (2) redact any identifying information of the juvenile offender other than the first requestor's child pursuant to section 58.007 of the Family Code. The city may withhold the remaining information from both requestors under section 552.108 of the Government Code. As our ruling is dispositive, we do not address your other arguments to withhold the information at issue.

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).

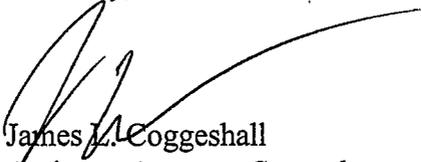
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James J. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 308158

Enc. Submitted documents