



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2008

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2008-06814

Dear Ms. Rangel:

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# 310417.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for three specific police reports. You state that you have provided the requestor with one of the requested reports. You claim that the remaining requested 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.

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 of the Government Code encompasses information protected by other statutes, such as 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. The relevant language of 58.007 reads as follows:

(c) . . . 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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by . . . 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 disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 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). Report number 08-3655 involves juvenile conduct that occurred after September 1, 1997. *See id.* § 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"). However, the requestor in this instance is the parent of the juvenile suspect. Under section 58.007(e), the requestor may inspect law enforcement records concerning her child. Fam. Code § 58.007(e). However, section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider your remaining arguments against the disclosure of this report and the remaining report.

You argue that section 552.108 prevents disclosure of both reports. This section excepts from disclosure "information 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). A governmental body that raises section 552.108 must reasonably explain how and why the release of the information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information relates to pending criminal investigations. You have provided a letter from the sheriff's records supervisor stating that both cases are still active and release would interfere with law enforcement. Based on this representation, we conclude that releasing the submitted 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.Civ.App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curium, 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). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. See *Houston Chronicle*, 531 S.W.2d at 187; ORD 127. You note that offense report number 08-988 pertains to an alleged sexual assault. You argue that the identity of a sexual assault victim must be withheld from the public under section 552.101 of the Government Code in conjunction with common law privacy. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision Nos. 393 (1983), 339 (1982). However, the requestor in this instance is the mother of the alleged sexual assault victim and has a special right of access to information that must otherwise be withheld from public disclosure to protect the victim's privacy. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, with the exception of basic information, the sheriff may withhold the requested reports under section 552.108 of the Government Code.¹

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

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

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).

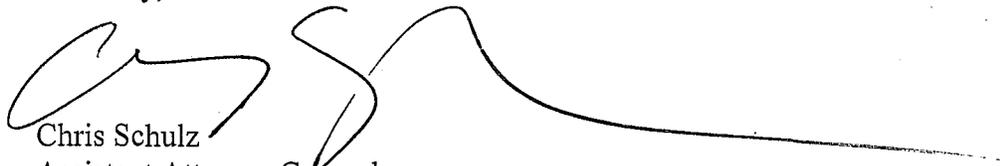
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/jb

Ref: ID# 310417

Enc. Submitted documents