



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2008

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2008-08888

Dear Ms. Alvarez:

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# 314941.

The Kingsville Police Department (the "department") received a request for all reports made by the requestor against four named individuals, including a February 2005 burglary. Because the department did not submit the burglary report to this office, we assume the department has released it to the extent it exists. *See Gov't Code §§ 552.301, .302.* You claim that the requested information is excepted from disclosure under 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 because the request is for reports made by the requestor, two of the submitted reports are not responsive to the instant request. The department need not release non-responsive information in response to this request and this ruling will not address that information. We have marked these reports accordingly.

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 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. 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.

...

(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). You indicate that all of the submitted reports involve juvenile offenders and should be excepted from disclosure under section 58.007. Upon review, we find that incident report numbers 07-0001010 and 08-001846 involve delinquent conduct that occurred after September 1, 1997. *See* Fam. Code. § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). 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 commission of the crime. *See id.* § 51.02(2). Thus, this

information is subject to section 58.007(c). Accordingly, the department must withhold incident report number 07-001010 in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. We note, however, that section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* § 58.007(c). We further note that incident report numbers 07-006419, 08-000264, and 07-006448 do not list a juvenile suspect or offender; therefore, we find that these reports are not confidential under section 58.007(c) of the Family Code. Consequently, the department may not withhold them under section 552.101 on that basis.

We also note that the requestor is the father of the juvenile offender listed in incident report number 08-001846. Under section 58.007(e), the requestor has a right to inspect law enforcement records concerning his child. *See id.* § 58.007(e). However, section 58.007(j) states that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). We note, for purposes of section 58.007(j), that a juvenile victim or witness is a person who is under eighteen years of age. Furthermore, section 58.007(j) 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). Accordingly, we will address your claim under section 552.108 of the Government Code for report number 08-001846 and the remaining 2008 incident reports.

Section 552.108(a) excepts from disclosure “[i]nformation 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 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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 531 S.W.2d 706 (Tex. 1977). You state that the 2008 cases “have not been concluded through the court system” and “[t]o produce information prior to the conclusion of the investigation and possible prosecution of the matter would impede the investigation and prosecution.” Based on your representation and our review of the information at issue, 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. 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). Thus, section 552.108(a)(1) is applicable to incident report numbers 08-001846 and 08-000264.

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* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, the department may withhold these reports under section 552.108(a)(1). However, any

information that identifies or tends to identify a juvenile victim or complainant, other than the requestor's child, in incident report number 08-001846 may not be released as basic information. *See* Fam. Code § 58.007(j)(1).

In summary, the department must withhold incident report number 07-001010 in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold incident report numbers 08-001846 and 08-000264 under section 552.108(a)(1) of the Government Code. However, in releasing basic information in incident report number 08-001846, the department must redact any information that identifies or tends to identify any juvenile victim or complainant, other than the requestor's child pursuant to section 58.007(j)(1) of the Family Code. The remaining responsive reports must be released to the requestor.

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). If the governmental body does not file suit over 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).

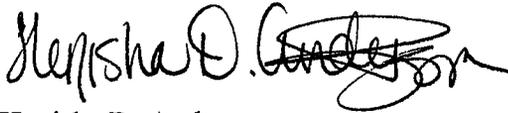
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 that reads "Henisha D. Anderson". The signature is written in a cursive style with a large, stylized initial "H".

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 314941

Enc. Submitted documents