



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2008

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2008-10346

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# 317327.

The Southlake Department of Public Safety (the "department"), which you represent, received a request from two separate requestors for incident report number 08SP019726. You claim that the submitted incident report 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, you acknowledge that the submitted incident report is a law enforcement record of juveniles that is generally confidential under section 58.007(c) of the Family Code. *See* Fam. Code § 58.007(c). You also acknowledge that, in this instance, each requestor is the father of one of the juvenile suspects listed in the report, and, as such, the department may not withhold the submitted report from these requestors under section 58.007(c) of the Family Code. *See id.* § 58.007(e) (providing that law enforcement records subject to section 58.007(c) may be inspected or copied by the child's parent). However, section 58.007(j) states that, notwithstanding section 58.007(e), any information that is excepted from required disclosure under Chapter 552, Government Code, or other law may still be withheld from disclosure. *See id.* § 58.007(j)(2). We will therefore address your claimed exception under section 552.108 of the Government Code.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert that the submitted incident report pertains to a criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

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 Publishing 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). We note that basic information includes, among other things, the identity of the complainant and a detailed description of the offense, but does not include the identity of a suspect. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). In this instance, the complainant listed in the report is the mother of the juvenile victim. As such, the juvenile victim’s identifying information includes the complainant’s identity. Section 58.007(j)(1) states that, before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent’s child. *Id.* § 58.007(j)(1). Accordingly, except for basic information, the department may withhold the submitted report under section 552.108(a)(2). However, in releasing the basic information pursuant to section 552.108(c) the department may not release the complainant’s identifying information because it identifies the juvenile victim.

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).

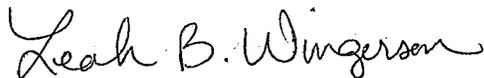
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 317327

Enc. Submitted documents