



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2008

Ms. Julie V. Pandya  
Assistant City Attorney  
City of Waco Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2008-12062

Dear Ms. Pandya:

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# 320756.

The Waco Police Department (the "department") received a request for all reports and call logs regarding Methodist Children's Home from April 4, 2008, to June 2, 2008. You state that some of the requested information will be made available to the requestor and that you are withholding social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Offense report 08-12950 was used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that offense report 08-12950 is confidential pursuant to section 261.201 of the Family Code, and the department must withhold this information, which we have marked, under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code, which is also encompassed by section 552.101. Section 58.007(c) provides 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.

Fam. Code § 58.007(c). Some of the submitted offense reports involve juvenile conduct in need of supervision occurring after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). None of the exceptions in section 58.007 appears to apply. Therefore, the department must withhold the information we have marked, as well as the CD marked “08-10328,” under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. You assert that offense report 08-8343 is also confidential under section 58.007 because it includes a juvenile witness; however, information relating to juvenile crime victims or witnesses is not made confidential by section 58.007. *See* Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). Offense report 08-8343 does not involve an allegation that a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007; therefore, this report is not confidential under section 58.007(c), and the department may not withhold it under section 552.101 on that ground.

You assert that some of the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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). You state that the following offense reports relate to pending criminal investigations: 08-8867, 08-9287, 08-11048, 08-11514, 08-11624, and 08-13258. 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). Therefore, we agree that section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 assert that offense report 08-8343 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

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*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold offense reports 08-8343, 08-8867, 08-9287, 08-11048, 08-11514, 08-11624, and 08-13258 under section 552.108.

Finally, we note that the submitted information includes a witness statement from offense report 08-13124. Although you have marked this document in pink to be withheld, you have not provided any arguments explaining why this information is excepted under the Act. See Gov't Code § 552.301(e)(1)(D) (governmental body must submit requested information labeled to indicate which exceptions apply to which parts of the documents). Thus, you have failed to establish that this information is excepted under the Act, and it must be released to the requestor.

To conclude, the department must withhold the information we have marked, as well as the CD you have marked as "08-10328," under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. With the exception of basic information, the department may withhold offense reports 08-8343, 08-8867, 08-9287, 08-11048, 08-11514, 08-11624, and 08-13258 under section 552.108 of the Government Code. The department must release the remaining information. 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). 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

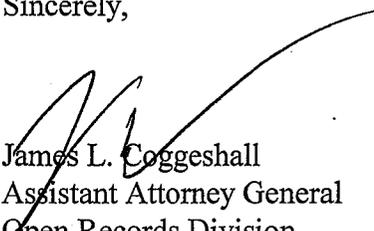
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ma

Ref: ID# 320756

Enc. Submitted documents

c: Mr. Nate Carlisle  
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(w/o enclosures)