



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2008

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2008-13388

Dear Mr. Mann:

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# 323156.

The Garland Police Department (the "department") received a request for incident report numbers 2008R017827 and 2008R017834. You state you have provided some of the requested information to the requestor. You claim portions of the submitted incident reports are 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.

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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 provides:

(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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. 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 reported conduct. *See id.* § 51.02(2). You claim portions of the submitted incident reports are confidential under section 58.007 because the reports involve juvenile law enforcement records. After reviewing the reports, however, we find report number 2008R017834 pertains to allegations of adult criminal conduct. Therefore, report number 2008R017834 is not confidential under section 58.007 of the Family Code and no part of it may be withheld under section 552.101 of the Government Code on this basis. Report number 2008R017827, however, involves allegations of juvenile conduct in violation of a penal statute. Therefore, report number 2008R017827 constitutes a report of criminal juvenile conduct for purposes of

section 58.007. However, the requestor is the parent of one of the juvenile suspects listed in the report. As you acknowledge, the department may not use section 58.007(c) to withhold this report from this requestor. *Id.* § 58.007(e). However, section 58.007(j) states the department must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). Accordingly, we will consider your other arguments against disclosure.

You contend portions of both of the submitted incident reports are 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[.]” Gov’t Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 2008R017827 and 2008R017834 pertain to pending criminal investigations. Based upon this representation, we conclude the release of the information you have marked in both reports 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). Therefore, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code.¹ We note, however, the remaining information in report number 2008R017827 contains identifying information of the listed juvenile suspects. Section 58.007(j) of the Family Code states the department must withhold any personally identifiable information of a juvenile suspect who is not the child of the requestor. Fam. Code § 58.007(j)(1). Thus, the department must withhold from the remaining information in report number 2008R017827 the marked identifying information of the juvenile suspect who is not the requestor’s child pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. We note the remaining information in report number 2008R017834 contains identifying information of juvenile offenders. This office has found common-law privacy applies to the identifying information of juvenile offenders. *See Open Records Decision No. 384* (1983); *cf.* Fam. Code § 58.007.

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

As previously noted, however, the requestor is the parent of one of the juvenile offenders. As such, she has a special right of access to information that would ordinarily be withheld to protect her child's common-law privacy interests. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, the department must withhold from report number 2008R017834 the marked identifying information of the juvenile offender who is not the requestor's child under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information you have marked in red in both reports under section 552.108(a)(1) of the Government Code. The department must withhold from report number 2008R017827 the marked identifying information of the juvenile suspect who is not the requestor's child pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j) of the Family Code. The department must withhold from report number 2008R017834 the marked identifying information of the juvenile offender who is not the requestor's child under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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).

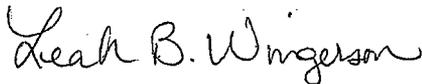
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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# 323156

Enc. Submitted documents