



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

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

OR2009-01396

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# 333792 (GCA08-0851).

The Garland Police Department (the "department") received a request for a specified incident report. You state you have released a redacted copy of the information. You claim portions of the submitted information 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 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 reads:

(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). 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). The submitted incident report involves a fifteen year old individual evading arrest. Thus, we find this report pertains to juvenile delinquent conduct. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). You inform us the requestor is the mother of the juvenile suspect. Under section 58.007(e), a parent or guardian of a juvenile offender may inspect law enforcement records concerning that juvenile offender. *Id.* § 58.007(e). Thus, the department may not withhold the submitted report under section 58.007(c). Section 58.007(j)(1) states any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must

withhold the identifying information pertaining to the other juvenile suspect, which you have marked in purple, under section 58.007(j)(1). Section 58.007(j)(2) states that the department may raise any other exceptions to disclosure under the Act or other law. *Id.* § 58.007(j)(2). You have marked portions of the remaining information under section 552.108 and 552.101 in conjunction with common-law privacy. Accordingly, we will address your arguments under these exceptions regarding the remaining information.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 the remaining information relates to an ongoing investigation and charges have been filed. You also state release of the marked information would interfere with law enforcement. Based on your representations and our review, we conclude the release of the information marked in red 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information you have marked in red under section 552.108(a)(1).¹

Section 552.101 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). This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455* (1987) (prescription drugs, illnesses, operations, and physical handicaps). Based on your representations and our review, we agree the remaining medical information you have marked in blue is intimate and not of legitimate interest to the public. Accordingly, the department must withhold this information marked in blue under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the identifying information marked in purple under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. The department may withhold the information marked in red under section 552.108(a)(1). The department must withhold the remaining medical information marked in blue under

¹As our ruling is dispositive, we need not address your remaining argument for this information.

section 552.101 in conjunction with common-law privacy. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 333792

Enc. Submitted documents

c: Requestor
(w/o enclosures)