



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-03044

Dear Mr. Griffith:

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# 340741 (ORR #09-1497).

The McKinney Police Department (the "department"), which you represent, received a request for case numbers 08-073233 and 08-073246. 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.

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 encompasses information protected by other statutes, such as 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 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, 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.

Id. §58.007(c), (e), (j). Case number 08-073246 involves juvenile conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. However, we note that the requestor appears to be the parent or guardian of the juvenile offender listed on the report. Under section 58.007(e), a parent of the juvenile offender or the juvenile offender may inspect law enforcement records concerning that juvenile offender. *Id.* § 58.007(e). Accordingly, if the requestor is not the parent or guardian of a juvenile offender, then the department must withhold case number 08-073246 under section 552.101 in conjunction with section 58.007 of the Family Code. However, if the requestor is the parent or guardian of the juvenile offender, then he has a right to inspect case number 08-073246 and it may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. Further, case number 08-073233 does not identify a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007 (c). Thus, you

have failed to demonstrate that case number 08-073233 is a juvenile law enforcement record. Therefore, case number 08-073233 may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Additionally, section 58.007(j) of the Family Code states that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2). Thus, because you assert the submitted information is excepted under section 552.108 of the Government Code, we must address whether case numbers 08-073233 and 08-073246 are excepted under this section.

Section 552.108(a)(1) 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] 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), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that the release of the submitted 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). Thus, section 552.108(a)(1) is applicable.

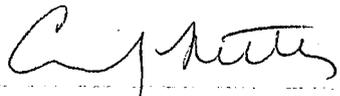
We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Gov’t Code* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 186-188; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We note the department has the discretion to release all or part of this information that is not otherwise confidential by law. *Gov’t Code* § 552.007.

In summary, if the requestor is not the parent or guardian of the juvenile offender in the submitted information, then the department must withhold case number 08-073246 under section 552.101 in conjunction with section 58.007 of the Family Code, and, with the exception of basic information that must be released, may withhold case number 08-073233 under section 552.108(a)(1) of the Government Code. If the requestor is the parent or guardian of the juvenile offender, then with the exception of basic information that must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 340741

Enc. Submitted documents

c: Requestor
(w/o enclosures)