



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Mr. J. David Dodd III
Attorney for City of Allen
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-04100

Dear Mr. Dodd:

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# 339193.

The Allen Police Department (the "department"), which you represent, received a request for all reports regarding the requestor's minor child. You claim that the submitted arrest report and incident reports are excepted from disclosure under sections 552.101, 552.103, 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. This section encompasses information made confidential by statute. Section 58.007 of the Family Code governs law enforcement records relating to juvenile offenders. 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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086 §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). For purposes of section 58.007, a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). However, for the purposes of section 58.007(j), we conclude that a juvenile victim or witness is a person who is under eighteen years of age. The submitted information involves allegations of juvenile conduct that occurred after September 1, 1997. *See id.* § 51.03. (defining "delinquent conduct" and "conduct indicating a need for supervision"). Thus, the information would ordinarily be confidential pursuant to section 58.007 of the Family Code. However, section 58.007(e) allows for the review or copy of juvenile law enforcement records by a child's parent or guardian. *See id.* § 58.007(e). Thus, the requestor in this instance has a right of access to the submitted law enforcement records involving his child. Before a parent may inspect juvenile law enforcement records, any personally identifiable information concerning juvenile suspects, offenders, victims, or witnesses other than the

parent's child must be redacted. *See id.* § 58.007(j)(1). Furthermore, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. Accordingly, we will consider your other arguments against disclosure.

You also contend that the submitted information is excepted under section 552.103 of the Government Code, which provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

Although you state that the requested information pertains to a case file that the department intends to file, or has filed with the District Attorney's office, we note the department would not be a party to any pending and anticipated prosecution of this case, and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. *See Gov't Code* § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Moreover, you have not provided this office with an affirmative representation from any governmental body with a litigation interest that the governmental body seeks to withhold the information at issue pursuant to section 552.103. *See Gov't Code* § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, the

department may not withhold the information at issue under section 552.103 of the Government Code.

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.” *Id.* § 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* 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 release of the submitted information would interfere with the further investigation and prosecution of the crime. Based on your representation and our review, we conclude that the release of incident report numbers 06030426, 06034473, and 07067313 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, section 552.108(a)(1) is applicable to incident report numbers 06030426, 06034473, and 07067313.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of basic front-page offense and arrest information, the department may withhold incident report numbers 06030426, 06034473, and 07067313 under section 552.108(a)(1). However, any personally identifiable information concerning juvenile arrestees or victims other than the requestor’s child may not be released as basic information. *See* Fam. Code § 58.007(j)(1).

You also claim section 552.108(a)(1) for arrest report number 06002272 and incident report number 06053849. We note, however, that these reports involve an alleged misdemeanor offense that occurred in September 2006. The statute of limitations for this type of offense is two years. *See* Crim. Proc. Code art. 12.02. More than two years have elapsed since the events giving rise to the investigation in this report. You have not informed this office of any criminal charges that were filed within the limitations period. Thus, you have not explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold arrest report number 06002272 or incident report number 06053849 under section 552.108(a)(1).

We note that arrest report number 06002272 and incident report number 06053849 contain Texas motor vehicle record information.¹ Section 552.130 of the Government Code excepts

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130(a)(1),(2)*. The department must withhold the information we have marked in arrest report 06002272 and incident report number 06053849 that relates to Texas motor vehicle record information pursuant to section 552.130.

In summary, (1) with the exception of basic information, the department may withhold incident report numbers 06030426, 06034773, and 07067313 under section 552.108 of the Government Code; (2) the department must redact from basic information any personally identifiable information concerning other juvenile arrestees or victims pursuant to section 58.007(j)(1) of the Family Code; (3) the department must withhold any personally identifying information of juvenile offenders, suspects, or witnesses other than the requestor's child in arrest report number 06002272 and incident report number 06053849 pursuant to 58.007(j)(1) of the Family Code; and (4) the department must withhold the Texas motor vehicle record information that we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.²

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/rl

²Should the department receive another request for these same records from a person who does not have a right of access to the information, the department should resubmit this same information and request another ruling from this office. *See Gov't Code § 552.301(a)*.

Ref: ID# 339193

Enc. Submitted documents

c: Requestor
(w/o enclosures)