



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Ms Luz E Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso Texas 79901

OR2009-04103

Dear Ms. Sandoval-Walker:

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# 339936.

The El Paso Police Department (the "department") received two requests from the same requestor for information pertaining to a specified incident. You claim that the submitted 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 public 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, including section 58.007 of the Family Code. 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.

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. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e).

The submitted information consists of two reports involving juvenile conduct occurring after September 1, 1997; therefore, both of the submitted reports are subject to section 58.007. The department must withhold report # 09-014335 pursuant to section 58.007(c). The requestor is a parent of the juvenile suspect in report # 09-014297, thus she has a right of access to this report. *See id.* § 58.007(e). However, the personally identifiable information concerning the juvenile victim must be redacted pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). 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. *See id.* § 58.007(j)(2). Thus, because you assert additional arguments under sections 552.101 and 552.108 of the Government Code, we must address whether report # 09-014297 is excepted under those sections. *See id.* § 58.007(j)(2).

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if: (1) 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 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 that report # 09-014297 relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this report 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). Thus, section 552.108(a)(1) is applicable to report # 09-014297.

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*. *See* 531 S.W.2d 177. Thus, with the exception of basic information, the department may withhold report # 09-014297 under section 552.108(a)(1) of the Government Code.

You argue that the identity of the adult victim in report # 09-01427 is protected by privacy. Section 552.101 encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy 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). Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” while the second type requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

The department has not explained how the adult victim information in report # 09-014297 is highly intimate or embarrassing, nor has it explained how any portion of the adult victim information falls within the zones of privacy or implicates an individual’s privacy interests

for purposes of constitutional privacy. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, none of the remaining information may be withheld on the basis of privacy.

In summary, the department must withhold report # 09-014335 pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department may, with the exception of basic information, withhold report # 09-014297 under section 552.108(a)(1) of the Government Code. The department must redact all identifying information of the juvenile victim in report # 09-014297 pursuant to section 58.007(j)(1) of the Family Code. The remaining basic information in report # 09-014297 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,



Travis Tidmore
Assistant Attorney General
Open Records Division

TT/rl

Ref: ID# 339936

Enc. Submitted documents

cc: Requestor
(w/o enclosures)