



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5338

OR2009-05300

Dear Ms. Janssen:

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# 340552.

The Austin Independent School District (the "district") received a request for information pertaining to the arrest of the requestor's son. You claim that the submitted police report and accompanying 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 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. You raise section 552.101 in conjunction with section 58.007(c) of the Family Code.¹ 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:

¹We note that you also refer this office to a letter from the City of Austin Assistant City Attorney (the "city attorney"). Although you assert the city attorney states the information at issue may be subject to section 58.003 of the Family Code, the submitted letter does not contain any reference to section 58.003. As you do not otherwise explain how section 58.003 applies to the information at issue, we presume you have withdrawn your assertion under this statute. *See* Gov't Code §§ 552.301, .302.

(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 Subchapters 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). We have reviewed the submitted police report, and we find it involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this report is generally confidential under section 58.007(c). We note, however, that the requestor is the mother of one of the juvenile offenders listed on the report. Pursuant to section 58.007(e), the district may not withhold the submitted law enforcement records from this requestor under section 58.007(c). Fam. Code § 58.007(e). However, section 58.007(j)(2) 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). Accordingly, we will address your remaining arguments against disclosure of the submitted police report and accompanying information.

You assert that the information at issue is 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, and provide a representation from the city attorney showing, that the submitted police report and accompanying information pertain to an active criminal investigation being conducted by the Austin Police Department. Based on your representation and our review of the submitted documents, we conclude that the release of this 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. Civ. 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); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that basic information includes identifying information of arrestees, and the submitted documents list a juvenile arrestee who is not the requestor’s child. Section 58.007(j)(1) states that, before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent’s child. *See* Fam. Code § 58.007(j)(1). Thus, pursuant to section 58.007(j)(1), the district must withhold from basic information the identifying information of the juvenile arrestee who is not the requestor’s son.

You assert that the remaining basic information is subject to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information

considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that there is a legitimate public interest in a criminal investigation by a law enforcement agency. See *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Thus, none of the basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, except for basic information, the district may withhold the submitted police report and accompanying information under section 552.108(a)(1) of the Government Code. However, in releasing the basic information, the district must redact any information that identifies or tends to identify the juvenile arrestee who is not the requestor’s child pursuant to section 58.007(j)(1) of the Family Code in conjunction with section 552.101 of the Government Code. The remaining basic 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

²We note that because the requestor has a statutory right of access to basic information in this instance, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 340552

Enc. Submitted documents

c: Requestor
(w/o enclosures)