



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2009

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2009-08147

Dear Ms. DeLuca:

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# 345811.

The Bryan Police Department (the "department") received a request for police reports, CAD reports and any other documents related to any time the police responded to a specified address or received a call from two named individuals since a specified date and copies of all department-wide e-mails sent by a named individual since a specified date. You inform us that you have released the requested e-mails. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 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 confidentiality provisions 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). Section 58.007 provides in relevant part:

(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.

Id. § 58.007(c). Report number 09-0201026 and its associated information pertain to a report of a juvenile runaway that occurred after September 1, 1997. This conduct is within the scope of section 58.007. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). Thus, section 58.007(c) is applicable to report number 09-0201026 and its associated information. Accordingly, the department must withhold report number 09-0201026 and its associated information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹ However, report number 09-0201120 and its associated information do not identify a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for the purposes of this section. Thus, you have failed to demonstrate that report number 09-0201120 and its associated information are juvenile law enforcement records. Thus, they are not confidential under section 58.007 of the Family Code and may not be withheld under section 552.101 of the Government Code on this basis.

We understand you to raise section 552.108(a)(2) of the Government Code for report number 09-0201120 and its associated information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report number 09-0201120 and its associated information are related to a case that did not result in a conviction or deferred adjudication. Based on this

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

representation, we conclude that section 552.108(a)(2) is applicable to the report number 09-0201120 and its associated information.

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure pursuant to section 552.108(c). Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 09-0201120 and its associated information under section 552.108(a)(2) of the Government Code. We will address your remaining exceptions for the basic information.

You assert that some of the remaining information is excepted under section 552.1175 of the Government Code, which provides in part the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note that section 552.1175 also encompasses a personal cellular telephone number, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1998). You inform us that some of the remaining information pertains to a licensed peace officer. You further inform us, and provide supporting documentation showing, that the officer at issue elected to restrict access to this information before the receipt of this request. Therefore, the department must withhold the information pertaining to this officer, which we have marked in the remaining information, under section 552.1175 of the Government Code.

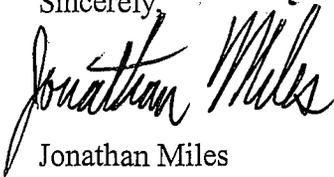
In summary, the department must withhold report number 09-0201026 and its associated information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the report number 09-0201120 under section 552.108(a)(2). The department

must withhold the personal information in the basic information under section 552.1175 of the Government Code. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 345811

Enc. Submitted documents

c: Requestor
(w/o enclosures)