



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-10654

Dear Ms. Byles:

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# 350804 (Fort Worth Request Nos. 3619-09 and 3646-09).

The City of Fort Worth (the "city") received two requests for the same incident report. You inform us that the city has redacted Texas motor vehicle record information from the submitted information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city.¹ 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision (as defined in section 51.03 of the Family Code) 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

¹ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations).

seventeen years of age. *See id.* § 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). We have reviewed the submitted report and we find that it involves allegations of a juvenile engaged in delinquent conduct that occurred after September 1, 1997. Thus, the submitted report is generally subject to section 58.007. However, you note that one of the requestors is a parent of the juvenile offender listed in the submitted report. Under section 58.007(e), a child's parent or guardian has a right to inspect or copy law

enforcement records concerning their own child. *See id.* § 58.007(e). Accordingly, the submitted report may not be withheld from the requestor who is the parent of the child under section 552.101 of the Government Code. *See id.* However, the city must withhold the submitted report in its entirety from the remaining requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note that section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claim under section 552.108 of the Government Code. 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information relates to a current criminal investigation and pending prosecution. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the submitted report from the requestor who is the child’s parent under section 552.108(a)(1) of the Government Code.

In summary, the city may withhold the submitted report, with the exception of basic information, from the requestor who is the child’s parent under section 552.108 of the Government Code. The city must withhold the entire report from the remaining requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family 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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", written in a cursive style.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/sdk

Ref: ID# 350804

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)