



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls
P. O. Box 1431
Wichita Falls, Texas 76307

OR2009-15146

Dear Mr. Massey:

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# 359358 (City ID # 215).

The Wichita Falls Police Department (the "department") received a request for the full report of a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 protected by section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Section 58.007(c) 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). In this instance, the listed suspect was nine years old at the time of the conduct. Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the submitted information is not confidential under section 58.007(c) of the Family Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

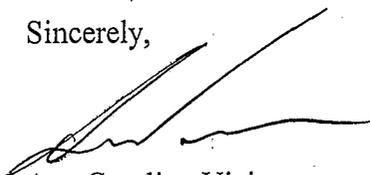
Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have submitted a representation from a lieutenant with the department which states, the submitted information is related to a closed case that has not resulted in a conviction or deferred adjudication. Based on your argument, you have not shown the submitted information pertains to a case that concluded in a final result. Therefore, none of the submitted information may be withheld under section 552.108 of the Government Code.

You also assert some of the submitted information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. As you raise no further exceptions against disclosure, 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 359358

Enc. Submitted documents

c: Requestor
(w/o enclosures)