



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 13, 2009

Ms. Leanne Lundy
Feldman, Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2009-16167

Dear Ms. Lundy:

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# 361312.

The Galveston Independent School District (the "district"), which you represent, received a request for all of the district's police department incident and arrest reports from a specified time period and a copy of the district's police manual.¹ You state that some of the information will be released to the requestor. 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.

Initially, you claim most of the submitted information in Exhibit C, which consists of use of force reports, is not responsive to the instant request. You state the requestor has asked for specific categories of information contained in the reports rather than the reports themselves. In her modified request, the requestor seeks, "copies of the [district's] yearly incidence reports, which contain offense, date of offense, and campus; and yearly arrest reports, which contain arrests total and offenses." Thus, based on our review we find the instant request encompasses the reports themselves and not specific categories of information. Accordingly, we find that all of the information in Exhibit C is responsive to the request.

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. Section 552.101 encompasses information protected by other statutes, 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. The relevant language of section 58.007(c) reads as follows:

¹We note the requestor modified her request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(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.

Id. § 58.007(c). For the 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). We have reviewed the submitted information and find that some of the included reports involve allegations of juvenile delinquent conduct in violation of penal statutes that occurred after September 1, 1997. Based on your representations, it does not appear that any of the exceptions in 58.007 apply; therefore, these reports, which we have marked, are confidential pursuant to section 58.007 of the Family Code. However, three of the submitted reports involve suspects listed as seventeen years of age or older at the date of the offenses; thus, these reports do not pertain to juvenile offenders. Therefore, these reports may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Further, although you generally assert the submitted reports pertain to juvenile offenders, we note that seven of the submitted reports do not reflect the ages of the suspects involved. Because we are unable to determine the ages of the individuals involved in these reports, we must rule conditionally. Thus, to the extent these reports constitute records of juvenile suspects or offenders engaged in delinquent conduct who are ten years of age or older and under seventeen years of age, they are confidential pursuant to section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, to the extent the remaining reports pertain to a suspect or offender who is not ten years of age or older and under seventeen years of age, the district may not withhold those reports under section 58.007.

Next, you assert the remaining information in Exhibit C is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 that

the remaining reports pertain to investigations by the district's police department that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

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 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), and includes a detailed description of the offense. Accordingly, with the exception of basic information, the district may withhold the remaining information in Exhibit C under section 552.108(a)(2) of the Government Code.

You also claim that portions of Exhibit D are protected from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of section 552.108, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 at 2 (1987) (release of forms containing information regarding when and where off-duty police officers will be working would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

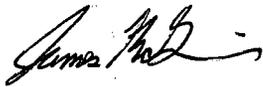
You assert the release of the use of force policy information in Exhibit D would "impair a GISD Police Officer's ability to arrest [a] suspect and would place individuals at an advantage in confrontations with police." Based on your representations and our review, we find that release of the information we have marked in Exhibit D would interfere with law enforcement. Accordingly, the district may withhold this information under section 552.108(b)(1) of the Government Code.

In summary, the district must withhold the reports we have marked under section 551.101 of the Government Code in conjunction with section 58.007 of the Family Code in their entirety. Additionally, to the extent the remaining reports pertain to suspects who are ten years of age or older and under seventeen years of age, they also must be withheld in their entirety under section 58.007 of the Family Code. With the exception of basic information, the district may withhold the remaining information in Exhibit C under section 552.108(a)(2) of the Government Code. The district may withhold the information we have marked in Exhibit D under section 552.108(b)(1) 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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 361312

Enc. Submitted documents

c: Requestor
(w/o enclosures)