



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2009

Mr. T. Daniel Santee, III
City Attorney and
Ms. Kelley K. Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2009-17704

Dear Mr. Santee and Ms. Messer:

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# 364248.

The City of Abilene (the "city") received a request for information relating to a specified charge against the requestor. You state the city has released some of the information. You claim 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, we note that you have redacted names of students without requesting a decision from this office. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code* §§ 552.301(a), 301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the city is authorized to redact this type information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the

city should refrain from redacting any information for which it is not authorized from the information that it submits to this office in seeking an open records ruling.

Section 552.101 of the Government Code excepts from public 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, including section 58.007 of the Family Code. The relevant language of section 58.007 provides:

(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.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007, a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) (“child” means a person who is ten years of age or older and under seventeen years of age). However, for the purposes of section 58.007(j), we conclude that a juvenile victim or witness is a person who is under eighteen years of age. You indicate that the submitted information involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, this information would ordinarily be confidential pursuant to section 58.007 of the Family Code. However, section 58.007(e) allows for the review or copy of juvenile law enforcement records by a child’s parent or guardian. *See id.* § 58.007(e). Thus, as the parent of one of the juvenile offenders involved, the requestor has a right of access to the submitted law enforcement records involving his child. Before a parent may inspect juvenile law enforcement records, any personally identifiable information concerning juvenile suspects, offenders, victims, or witnesses other than the parent’s child must be redacted. *See id.* § 58.007(j)(1). Furthermore, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. Therefore, we will consider your other argument against disclosure.

Section 552.108(a)(1) of the Government Code exempts 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the submitted information pertains to a pending case. Based on your representation and our review, we conclude that section 552.108(a)(1) is generally applicable to the submitted information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (*per curiam*) (court delineates law enforcement interests that are present in active cases).

We note, however, that the submitted information includes copies of the second page of the citations issued in this case. However, it is not clear whether the submitted portions of the citations were provided to the individuals cited. Thus, we must rule in the alternative. If the submitted portions of citations were not provided to the individuals cited, they may be withheld under section 552.108(a)(1). If the submitted portions of the citations were provided to the individuals who were cited, the release of this information will not interfere with the detection, investigation, or prosecution of crime and they may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). However, in that instance, the city must redact any personally identifiable information contained in the citations pertaining to a juvenile suspect, offender, victim, or witness other than the requestor’s child. *See* Fam.

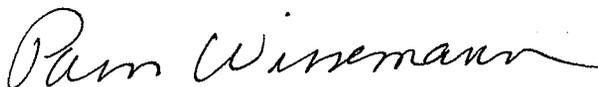
Code § 58.007(j)(1). In either case, the city may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

In summary, the city may generally withhold the submitted information under section 552.108(a)(1) of the Government Code. However, to the extent the submitted portions of the citations were provided to the individuals cited, the city may not withhold them under section 552.108(a)(1); in that instance, the city must redact from release of the citations any information that identifies or tends to identify a juvenile suspect, offender, victim, or witness, other than the requestor's child, pursuant to section 58.007(j)(1) of the Family Code.¹

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 364248

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access in this instance to information that would otherwise be confidential. See Fam. Code 58.007(e). Therefore, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.