



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
For City of Allen
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-18105

Dear Mr. Dodd:

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# 370509 (City of Allen ID No. 40825).

The Allen Police Department (the "department"), which you represent, received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 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 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. The relevant language of section 58.007 of the Family Code 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.

...

(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 conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted. *Id.* § 58.007(j)(1). 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. *See id.* § 58.007(j)(2).

The submitted documents contain information that involves juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. However, we note, the requestor is a parent or guardian of one of the juvenile suspects. Accordingly, the information pertaining to the requestor's child may not be withheld from her under section 552.101 of the Government Code on the basis of section 58.007(c). *See id.* § 58.007(e). However, the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness must be redacted pursuant

to section 58.007(j)(1). *Id.* § 58.007(j)(1). In addition, because you assert that the submitted information is excepted under sections 552.103 and 552.108 of the Government Code, we must address whether the information at issue is excepted under those sections. *See id.* § 58.007(j)(2).

Section 552.108 of the Government Code 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 state the submitted information is related to a pending criminal case. Based on your representations, we conclude that section 552.108(a)(1) is generally 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).

We note, however, that the submitted information includes a copy of a citation. Because copy of the citation has been provided to the individual who was cited, we find that release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude that the submitted citation may not be withheld under section 552.108(a)(1).

We also note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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. The department must generally release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information and the submitted citation, the department may withhold the submitted information under section 552.108(a)(1). However, in releasing basic information, the department may not release any personally identifiable information concerning any juvenile suspect, offender, victim, or witness other than the juvenile suspect to whom the requestor is a parent or guardian. *See* Fam. Code § 58.007(j)(1).

We next address your claim under section 552.103 of the Government Code for the submitted citation. Section 552.103 provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The department has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the university received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

The department indicates the submitted citation relates to pending litigation. We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. The submitted citation was provided to the individual who was cited; thus, the citation was inevitably seen by the opposing party to the litigation. Therefore, the submitted citation may not be withheld under section 552.103 of the Government Code.

In summary, with the exception of basic information and the submitted citation, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing the basic information the department must redact any information that identifies or tends to identify a juvenile suspect, offender, victim, or witness under section 58.007(j)(1) of the Family Code, other than the juvenile suspect to whom the requestor is a parent or guardian.¹

¹We note that the information being released contains confidential information to which the requestor has a right of access. *See* Fam. Code § 58.007(e). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 370509

Enc. Submitted documents

c: Requestor
(w/o enclosures)