



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2010

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2010-00104

Dear Ms. Brown:

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# 366310.

The Plano Police Department (the "department") received a request for incident report number 2009-00144250. You state the department is withholding some of the requested information based upon the ruling in *Attorney General v. Plano Police Department*, No. GV-001919 (126th Dist. Ct., Travis County, Tex., December 18, 2000) (stating the department may withhold an offense report related to a pending criminal case under section 552.108(a)(1) of the Government Code without seeking a decision from this office). You claim the remaining requested 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 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 incident report involves juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted incident report is subject to section 58.007. You inform us that the requestor is the fiancé of the mother of one of the juvenile offenders, and we note he may be the authorized representative of the juvenile's mother or the guardian of one of the juvenile offenders. Accordingly, if the requestor is not the authorized representative of the mother of a juvenile offender or the guardian of a juvenile offender, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. However, if the requestor is the authorized representative of the mother of a juvenile offender, or if he is a

guardian of a juvenile offender, then the information pertaining to the child of the requestor's fiancée may not be withheld under section 552.101 of the Government Code on that ground. *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 the submitted information is excepted under section 552.108 of the Government Code, we must address whether the information at issue is excepted under that section. *See id.* § 58.007(j)(2).

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) 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)(1)-(2). You appear to raise both of these provisions, which generally are applicable to mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal investigation or prosecution. Section 552.108(a)(2) is applicable only to information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. 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 information at issue relates to an active and open case that is still pending. You also state the release of this information would interfere with the investigation and prosecution of this crime. Based on your representation, we conclude that section 552.108(a)(1) is applicable to the information at issue. *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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, if the requestor is the authorized representative of the mother of a juvenile offender or if he is a guardian of a juvenile offender, then, with the exception of the basic information, the department may withhold the submitted information under

section 552.108(a)(1). However, the department may not release as basic information any personally identifiable information concerning any juvenile suspect, offender, victim, or witness other than the juvenile offender to whom the requestor or the requestor's fiancée is a guardian. *See* Fam. Code § 58.007(j)(1).

In summary, if the requestor is not the authorized representative of the mother of a juvenile offender or the guardian of a juvenile offender, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. If the requestor is the authorized representative of the mother of a juvenile offender or if he is a guardian of a juvenile offender, then, with the exception of basic information, the department may withhold the submitted information under section 552.108 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 offender to whom requestor or the requestor's fiancée is a guardian.

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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 366310

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)