



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-00570

Dear Ms. Sandoval-Walker:

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# 367081.

The El Paso Police Department (the "department") received a request for information pertaining to a specified case number. 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.

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). Report numbers 07-298345 and 07-164266 involve 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 the juvenile offender involved, the requestor has a right of access to the submitted law enforcement records involving his child. However, 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal case that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted information pertaining to two separate incidents. You inform us, and have provided documentation from the El Paso County Attorney's Office reflecting, that report number 07-298345 pertains to a case that resulted in a deferred prosecution agreement, and that the terms of the deferred prosecution agreement have been completed without the case concluding in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to report number 07-298345. However, you have failed to provide any arguments with respect to report number 07-164266. *See Gov't Code* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Accordingly, we conclude report number 07-164266 may not be withheld under section 552.108(a)(2).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 07-298345 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of basic information, the department may withhold report number 07-298345 under section 552.108(a)(2) of the Government Code. The remaining information must be released.¹

¹We note the remaining information being released contains confidential information regarding the child to which the requestor has a right of access as the child's parent. *See* Fam. Code § 58.007(e). 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. We also note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 367081

Enc. Submitted documents

cc: Requestor
(w/o enclosures)