



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2010

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

OR2010-02983

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# 371557.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident, including the search warrant application. 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, we note that you have not submitted the requested search warrant application. Thus, to the extent any search warrant application responsive to the request and maintained by the department existed on the date the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the

Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You contend that the submitted information is subject to section 58.007. We note that none of the individuals listed as offenders in the submitted information were under the age of seventeen at the time of the offense. Upon review of your arguments and the submitted report, we find you have failed to demonstrate how the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Thus, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also assert that the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See 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 investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information relates to a criminal investigation that involved four suspects, two of whom received deferred adjudication. You also explain that the charges against the other suspects were dismissed, and thus did not result in a conviction or deferred adjudication. We understand you to contend that the information relating to the individuals who received deferred adjudication and the individuals whose charges were dismissed is so intertwined

that it cannot be easily separated and that release of information relating to the convicted individuals would reveal information relating to the individuals whose charges were dismissed. Based on your representations and our review, we agree that the information cannot be separated. Accordingly, we conclude that section 552.108(a)(2) is applicable to the submitted 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 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 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the department may withhold the submitted information from disclosure under section 552.108(a)(2) of the Government Code.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 371557

Enc. Submitted documents

c: Requestor
(w/o enclosures)