



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 3, 2010

Mr. Joe Torres, III
Attorney at Law
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2010-11642

Dear Mr. Torres:

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# 389017.

The City of Alice (the "city") received a request for information relating to a specified incident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We also understand you to raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered your claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from 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 that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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.

Id. § 58.007(c), (e), (j). You assert the submitted information is confidential under section 58.007(c). Upon review, we agree the submitted information involves juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. *See id.* § 51.03 (defining "delinquent conduct"). We note the requestor is the parent of one of the juvenile offenders; therefore, information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007. *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 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 pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (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;
- (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
- (4) it is information that:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a), (b). A governmental body claiming subsection 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You generally state the submitted information is excepted under the law enforcement section of section 552.108. However, you make no arguments explaining how section 552.108 is applicable to the information at issue. Therefore, you have failed to demonstrate the applicability of section 552.108 to the information at issue. Gov't Code § 552.301(e)(1)(A) (governmental body must reasonably explain how and why exception is applicable to the information at issue). Consequently, none of the submitted information may be withheld on that basis.

Accordingly, we have marked the personally identifiable information of a juvenile offender other than the requestor's child that must be redacted pursuant to section 58.007(j)(1). The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 389017

Enc. Submitted documents

c: Requestor
(w/o enclosures)