



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

Mr. Dan T. Saluri
Sr. Assistant City Attorney
City of San Angelo
106 South Chadbourne
San Angelo, Texas 76903

OR2010-16133

Dear Mr. Saluri:

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# 397862.

The San Angelo Fire Department (the "department") received a request for all reports relating to fire investigations conducted during the past ten years by a named fire marshal in which arson was determined to be the cause of the fire, excluding any pending investigations. You state you have released some of information to the requestor. You claim that the remaining 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 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. Section 58.007(c) provides 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.

Fam. Code § 58.007(c). 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(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The reports in Attachment 3 relate to alleged delinquent conduct that occurred after September 1, 1997. As such, this information constitutes law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold the reports in Attachment 3 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108(a)(2) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a criminal case that did not result in a conviction or a deferred adjudication. We note that for the purposes of section 552.108, the arson investigation division of a fire department is considered to be a law enforcement unit. *See* Open Records Decision No. 127 at 8 (1976) (addressing statutory predecessor). You state the reports in Attachment 2 relate to criminal investigations conducted by the named fire marshal, who is charged with investigating arson. You state that these investigations have been closed and that none of the investigations resulted in conviction or deferred adjudication. Thus, we find that section 552.108(a)(2) is applicable to the reports in Attachment 2.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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 considered to be basic information). Thus, with the exception of basic information, which you state you have released, the department may withhold the reports in Attachment 2 under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the reports in Attachment 3 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the reports in Attachment 2 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 397862

Enc. Submitted documents

c: Requestor
(w/o enclosures)