



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2011

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

OR2011-00249

Dear Ms. Alvarez:

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# 404986 (KPD No. 2010-279).

The Kingsville Police Department (the "department") received a request for the arrest reports and arrestee search reports for all persons arrested by the department between October 1, 2009 and the date of the request; information about the interaction of the department with federal law enforcement between January 1, 2009 and the date of the request; all information regarding funding received from the state or federal government relating to immigration and border security issues; all information regarding reimbursements received from the state or federal government relating to immigration and border security issues and immigration enforcement activities; all information containing communications with Immigration and Customs Enforcement relating to collaboration between federal agencies and local law enforcement; all information created or generated pursuant to the Texas Code of Criminal Procedure section 2.132; all information relating to racial profiling and/or immigration enforcement; information regarding policies, procedures, and practices relating to traffic stops; information regarding policies and procedures for dealing with non-English speakers during routine traffic stops; information relating to policies and procedures for when, why, and how to contact federal agencies dealing with immigration; and information regarding every state and/or federally funded law enforcement operation or program relating to the amount of contraband, number of trafficked persons recovered, and number of aliens apprehended, and successful prosecutions thereof.<sup>1</sup> You claim that the submitted information

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<sup>1</sup>You inform us the department received clarification of this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general decision is measured from the date request is clarified or narrowed).

is excepted from disclosure under sections 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

We note a portion of the submitted information consists of either Border Incident and Assessment Reports, which the requestor specifically excluded from his clarified request, or is information that was created after the date the department received the request. This information is not responsive to the present request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. This decision does not address the public availability of non-responsive information, and the department need not release it in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>3</sup> Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 58.007 of the Family Code, which 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.

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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). Upon review, we find the arrest report we have marked involves allegations of a juvenile engaged in delinquent conduct which occurred after September 1, 1997. Therefore, we conclude this information is subject to section 58.007(c) of the Family Code. Thus, the department must withhold the marked report under section 552.101 of the Government Code on that basis.<sup>4</sup>

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the remaining submitted information relates to pending criminal cases. Upon review, we find release of the information we have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information we have marked.

We note section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the department must release basic information from the arrest report we have marked. The department may withhold the remaining marked information under section 552.108(a)(1) of the Government Code.<sup>5</sup>

Section 552.108(a)(2) excepts from 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). Upon review, we find you have failed to demonstrate how any of the remaining information relates to an investigation that did not result in conviction

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

or deferred adjudication. Accordingly, the department may not withhold any of the remaining responsive information on that basis.

In summary, the department must withhold the report we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The remaining responsive information must be released.

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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 404986

Enc. Submitted documents

c: Requestor  
(w/o enclosures)