



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2011

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-01166

Dear Mr. Griffith:

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# 406922 (ORR # 10-3001).

The McKinney Police Department (the "department"), which you represent, received a request for information relating to two specific incidents and a specified address. You state some of the requested information has been released. You claim 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 information you submitted.

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 exception encompasses information other statutes make confidential. Section 58.007 of the Family Code provides in part:

(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); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code tit. 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You contend the information relating to case number 06-069381 is confidential under section 58.007(c). We find the information in question involves juvenile offenders. We therefore conclude the department must withhold the information relating to case number 06-069381 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108 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 . . . 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the rest of the submitted information relates to closed cases that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to the remaining information.¹

We note 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 (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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the remaining information includes call-for-service reports. In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-assisted dispatch (“CAD”) report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such

¹As we are able to make this determination, we need not address your claim under section 552.108(b)(2) of the Government Code.

information is generally public). Therefore, the department may withhold the remaining information under section 552.108(a)(2), except for the basic information that must be released under section 552.108(c).

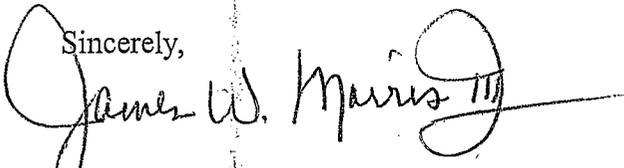
We note basic information includes a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, some of the basic information is protected by common-law privacy under section 552.101 of the Government Code. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We have marked the remaining information that is highly intimate or embarrassing and not a matter of legitimate public interest. In releasing basic information under section 552.108(c), the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

In summary: (1) the department must withhold the information relating to case number 06-069381 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the department may withhold the rest of the submitted information under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c); and (3) in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

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Ref: ID# 406922

Enc: Submitted documents

c: Requestor
(w/o enclosures)