



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2011

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

OR2011-01178

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# 406834.

The City of Alice (the "city"), which you represent, received three requests from the same requestor for information pertaining to three specified incidents. 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.

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 section 58.007 of the Family Code, which provides in relevant 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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct”). For purposes of section 58.007, a “child” is 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 report number 2010-12861 pertains to an alleged assault on a student at a middle school. You assert, and the information reflects, that this report involves a seventh grade suspect. However, the report does not indicate the age of the offender involved. Because we are unable to determine the age of the offender involved in this record, we must rule conditionally. To the extent report number 2010-12861 constitutes a record of a juvenile offender engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime, it is confidential pursuant to section 58.007 and must be withheld under section 552.101. However, to the extent this report pertains to an offender who is not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the city may not withhold it under section 552.101 on the basis of section 58.007. We further note that none of the remaining reports identify any juveniles as suspects or offenders. Thus, you have failed to demonstrate how the remaining reports are subject to section 58.007 of the Family Code, and they may not be withheld under section 552.101 of the Government Code on that basis.

Next, we address your claim under section 552.108 of the Government Code for the remaining submitted reports. Section 552.108 provides in relevant 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.

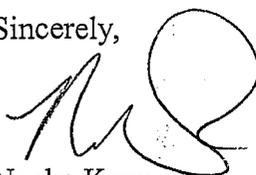
Gov't Code § 552.108(a)-(b). Although you generally assert the remaining submitted reports are excepted from disclosure under section 552.108, you have not specified the subsection of section 552.108 that applies to the information, nor have you submitted any specific arguments explaining how section 552.108 applies to the information. *See id.* § 552.301(e)(1)(A) (stating it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). Consequently, you have failed to establish the applicability of section 552.108 of the Government Code to the information at issue, and the city may not withhold any information on that basis.

In summary, the city must withhold report number 2010-12861 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code to the extent this information constitutes a record of a juvenile offender engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime. The remaining submitted reports 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/vb

Ref: ID# 406834

Enc. Submitted documents

c: Requestor  
(w/o enclosures)