



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2011

Mr. Whitt L. Wyatt  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201

OR2011-01321

Dear Mr. Wyatt:

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# 407069 (Reference No. 46433).

The Allen Police Department (the "department"), which you represent, received a request for all records pertaining to a specified address involving four named individuals during a specified period of time. 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 information that other statutes make confidential, such as section 58.007 of the Family Code. 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.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct"). For the purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). However, for the purposes of section 58.007(j), we conclude that a juvenile victim or witness is a person who is under eighteen years of age. Upon review, we find the submitted reports involve juveniles engaged in delinquent conduct. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Thus, the submitted reports are within the scope of section 58.007(c). As it does not appear any of the exceptions to confidentiality under section 58.007(e) apply to report numbers 10053852 and 10057470, those reports must be withheld in their entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. However, we note the requestor in this instance is a parent of the juvenile offender listed in report numbers 100000847 and 10055953. Accordingly, these reports may not be withheld from this requestor under section 552.101 in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). Nevertheless,

any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must withhold this information, which we have marked, in report number 100000847. In addition, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining argument against disclosure of report number 10055953.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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 a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. 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.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report number 10055953 pertains a crime which has not been fully investigated and has not yet resulted in a conviction nor a deferred adjudication. We therefore understand you to assert the applicability of section 552.108(a)(1). Based on your representation and our review, we conclude that the release report number of 10055953 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).

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of

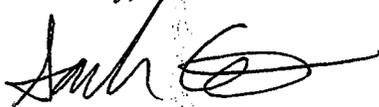
information deemed public by *Houston Chronicle*). Accordingly, with the exception of the basic information, the department may withhold report number 10055953 under section 552.108(a)(1). However, in releasing the basic information, the department must redact the identifying information of any juvenile suspects, offenders, victims, or witnesses who are not the requestor's child pursuant to section 58.007(j)(1) of the Family Code.

In summary, the department must withhold report numbers 10053852 and 10057470 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked in report number 100000847 under section 552.101 in conjunction with section 58.007(j)(1). With the exception of the basic information, the department may withhold report number 10055953 under section 552.108(a)(1) of the Government Code. However, in releasing the basic information, the department must redact the identifying information of any juvenile suspects, offenders, victims, or witnesses who are not the requestor's child pursuant to section 58.007(j)(1) of the Family Code. The remaining information must be released to this requestor.<sup>1</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/vb

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<sup>1</sup>We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 407069

Enc. Submitted documents

c: Requestor  
(w/o enclosures)