



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-06602

Dear Ms. Benton:

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# 417346 (Ref# LGL-11-285).

The City of Waco (the "city") received a request for police incident report number 11-2808. You claim the submitted incident report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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:

...

- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The submitted incident report number 11-2808 involves a sixteen-year-old individual arrested for assault. Thus, we find this information involves juvenile delinquent conduct and is subject to section 58.007(c). *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007).

We note, however, the city received the request for information from a Court Appointed Special Advocates of Denton County ("CASA") representative. You have provided us with a copy of a court order included with the requestor's request for information showing CASA was appointed the guardian ad litem of the child who is the subject of the submitted incident

report. In this instance, we are unable to determine whether or not CASA is the child's guardian for purposes of section 58.007. Thus, if the city determines CASA is not the child's guardian for purposes of section 58.007, the city must withhold the submitted incident report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² If, however, the city determines CASA is the child's guardian, the city may not use section 58.007(c) to withhold this information from this requestor. *Id.* § 58.007(e). Section 58.007(j)(2), however, states the city must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). Therefore, we will address your claim under section 552.108 of the Government Code.

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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 11-2808 pertains to a pending criminal case. Based on this representation and our review, we conclude the release of this information 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).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the submitted incident report under section 552.108(a)(1) of the Government Code.

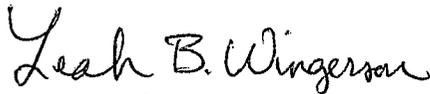
In summary, if the city determines CASA is not the child's guardian for purposes of section 58.007 of the Family Code, the city must withhold the submitted incident report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the city determines CASA is the child's guardian for purposes of section 58.007 of the Family Code, then, with the exception of basic information, the city may withhold the submitted incident report under section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not address your argument against disclosure.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 417346

Enc. Submitted documents

c: Requestor
(w/o enclosures)