



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

Captain Greg Minton
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2011-08372

Dear Captain Minton:

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# 420331.

The Leander Police Department (the "department") received a request for a copy of a specified police report and information pertaining to a specified arrest. You claim the submitted report 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. This section 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). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct"). The report concerns an incident that occurred after September 1, 1997, in which a sixteen-year-old child was arrested for possession and promotion of child pornography. Thus, this information involves a child allegedly engaged in delinquent conduct that occurred after September 1, 1997. Accordingly, the report is subject to section 58.007. In this instance, the requestor is the child's parent. Pursuant to section 58.007(e), the department may not withhold the report from the requestor under section 58.007(c). *Id.* § 58.007(e). Under section 58.007(j)(1), however, any personally identifiable information concerning other child suspects, offenders, victims, or witnesses must be redacted. *Id.* § 58.007(j)(1). The report includes the names, addresses, and telephone numbers of child victims and witnesses. Therefore, the department must withhold the information we marked pursuant to section 552.101 of the Government Code in

conjunction with section 58.007(j)(1) of the Family Code. We note section 58.007(j)(2) protects information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). We will therefore address your arguments under section 552.101 in conjunction with common-law privacy, and section 552.108 of the Government Code for the remaining information.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You seek to withhold the remaining information under common-law privacy because the nature of the crime involved in the report is highly intimate or embarrassing. However, this office has found there is a legitimate public interest in information pertaining to the details of a criminal investigation. *See* Open Records Decision No. 400 at 4 (1983). *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, we find no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you seek to withhold the narrative and supplemental reports under section 552.108(a)(1) of the Government Code. This section 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 the report pertains to a pending investigation. Based on your representation and our review, we conclude the release of the narrative and supplemental reports 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, 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*. *See* 531 S.W.2d

at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Although you seek to withhold the entire narrative under section 552.108(a)(1), basic information includes a detailed description of the offense. *See id.* Therefore, with the exception of a detailed description of the offense, the department may withhold the narrative and supplemental reports under section 552.108(a)(1) of the Government Code. The remaining information must be released.

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of a detailed description of the offense, the department may withhold the narrative and supplemental reports under section 552.108(a)(1) of the Government Code. The remaining 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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 420331

Enc. Submitted documents

c: Requestor
(w/o enclosures)