



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2011-15762

Dear Ms. Cohen:

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# 434309 (DPS PIR# 11-1927).

The Texas Department of Public Safety (the "department") received a request for twenty-five categories of information pertaining to a specified traffic accident. You state you have released some of the requested information. You claim that the submitted information 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 some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the information at issue is held by the department as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the submitted information does not consist of records of the judiciary, we will address your exception to disclosure.

Next, we note the submitted information includes a court-filed document that is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides that information contained in a public court record is public information that cannot be withheld from disclosure unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you raise section 552.108 for this information, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, the department may not withhold the court-filed document on this basis. However, we note the court-filed document is subject to section 552.101 of the Government Code, which does constitute "other law" that makes information confidential for the purposes of section 552.022.¹ As such, we will address the applicability of section 552.101 to the court-filed document. We will also address your argument under section 552.108 with respect to the information that is not subject to section 552.022.

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 protected by other statutes, such as section 58.007 of the Family Code, which 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are

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

confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted court-filed document involves a child engaged in conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold the court-filed document we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 that the remaining information relates to a criminal case in which charges are pending against one or more individuals. Based upon your representation and our review, we conclude that release of the remaining 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

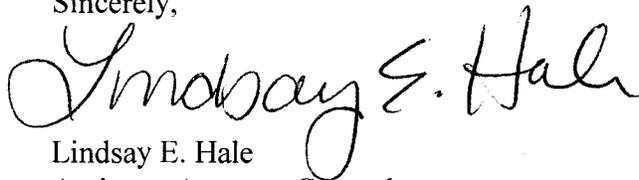
As you acknowledge, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, which you state you have released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, to the extent the information at issue is held by the department as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. The department must withhold the court-filed document we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the basic front page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ret: ID# 434309

Enc. Submitted documents

c: Requestor
(w/o enclosures)