



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79999-1977

OR2011-16307

Dear Mr. Safi:

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# 435518 (EPISD ORR #2011.327).

The El Paso Independent School District (the "district"), which you represent, received a request for (1) minutes from a meeting of the district's board of trustees and (2) a specified police report. You inform us the minutes of the open portion of the board meeting either have been or will be released. You state the district will withhold the certified agenda and tape recording of the closed portion of the board meeting under section 551.104 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note, and you acknowledge, the submitted information is generally confidential under section 58.007(c) of the Family Code.² Section 58.007 provides in part:

¹Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of asking this office for a ruling, including a certified agenda and tape of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

²Section 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 exception encompasses information other statutes make confidential.

(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); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. The submitted information involves a juvenile offender, so as to fall within the scope of section 58.007(c). In this instance, however, the requestor is a parent of the juvenile concerned. As such, the

requestor has a right to inspect law enforcement records concerning his child pursuant to section 58.007(e). *See id.* § 58.007(e). Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider your claims under sections 552.108 and 552.135 of the Government Code for the submitted information.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided documentation confirming, that release of the submitted report created by the district’s police department would interfere with a pending criminal prosecution. Based on your representations and documentation, we conclude section 552.108(a)(1) is applicable in this instance. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note 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; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of a police report.

We understand you to contend some of the basic information is excepted from disclosure under section 552.135 of the Government Code. This exception provides in part:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

- (b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

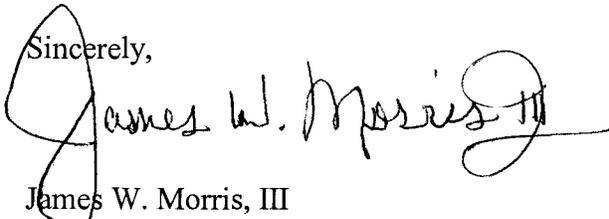
Gov’t Code § 552.135(a)-(b). Although you generally claim section 552.135 for “persons identified as complainants, reporters or witnesses,” you have not directed our attention to any specific individual whose identity you seek to withhold under section 552.135. *See id.* § 552.301(e)(1)(A) (governmental body must provide written comments explaining applicability of claimed exception). We note basic information under section 552.108(c) does not include the identities of witnesses. We also note the submitted report does not list

a complainant or a reporting party. We therefore conclude the district may not withhold any of the basic information under section 552.135 of the Government Code. Instead, the district must release basic information in accordance with section 552.108(c). *See* ORD 127 at 3-4. The district may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.³

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 435518

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³Because this requestor has a right of access under section 58.007(e) to information the district would be required to withhold from the general public, the district should request another decision if it receives a request for this same information from a different requestor. *See* Gov't Code §§ 552.301(a), .302.