



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Mr. Jeffrey L. Moore
For the City of The Colony
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-19036

Dear Mr. Moore:

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# 440796.

The City of The Colony Police Department (the "department"), which you represent, received a request for all police reports that occurred at a specified address between January 2009 and June 2010. 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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,

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). 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). Exhibits B and E, and the associated call sheets in Exhibit F, involve fifteen year old individuals suspected of obstruction/retaliation and promotion of child pornography. Thus, we find Exhibits B and E, and the associated call sheets in Exhibit F, involve juvenile delinquent conduct. *See id.* § 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find the information at issue is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ The remaining information in Exhibits C and D, and the associated call sheets in Exhibit F, however, do not contain an identified juvenile suspect or offender. Thus, you have failed to demonstrate how Exhibits C and D, and the associated call sheets in Exhibit F, involve a juvenile engaged in delinquent conduct or conduct in need of supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Consequently, Exhibits C and D, and the associated call sheets in Exhibit F, may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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 Exhibit C, and the associated call sheets in Exhibit F, pertain to a pending criminal investigation. Based on

¹As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

your representations and our review, we determine 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to Exhibit C, and the associated call sheets in Exhibit F.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit D, and the associated call sheets in Exhibit F, pertain to a closed case that concluded in a final result other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to Exhibit D, and the associated call sheets in Exhibit F.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibit C, and the associated call sheets in Exhibit F, under section 552.108(a)(1) of the Government Code and Exhibit D, and the associated call sheets in Exhibit F, under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold Exhibits B and E, and the associated call sheets in Exhibit F, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold Exhibit C, and the associated call sheets in Exhibit F, under section 552.108(a)(1) of the Government Code and Exhibit D, and the associated call sheets in Exhibit F, under section 552.108(a)(2) 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 cursive script that reads "Sean Opperman". The signature is written in black ink and has a fluid, connected style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 440796

Enc. Submitted documents

c: Requestor
(w/o enclosures)