



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2012

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2012-00039

Dear Mr. Walker:

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# 440978 (Montgomery ORR# 2011-5429).

The Montgomery County Sheriff's Department (the "sheriff") received a request for a report involving an investigation into the death of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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:

(2) any information that is excepted from required disclosure under [the Act] or other law.

Id. § 58.007(c), (e), (j). *See also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find the submitted information involves the investigation of delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of section 58.007). However, we note the requestor in this case might be the legal guardian of the child named in the report. As we are unable to make this determination, we must rule conditionally. If the sheriff determines the requestor is not the child's legal guardian, then the submitted information is confidential under section 58.007(c) of the Family Code and the sheriff must withhold it under section 552.101 of the Government Code. If the sheriff determines the requestor is the child's legal guardian, then the sheriff

may not withhold the submitted information on the basis of section 58.007(c) of the Family Code. Nonetheless, before providing this information to the requestor, the sheriff must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 58.007(j)(2). As you claim section 552.108 of the Government Code, we will consider that exception.

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 the submitted information relates to a pending criminal investigation and release of the information could interfere with that investigation. *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, we conclude section 552.108(a)(1) of the Government Code is applicable.

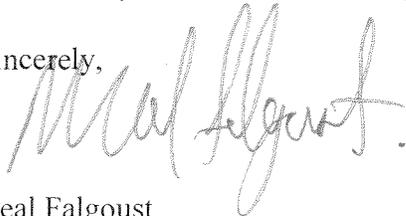
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a detailed description of the offense and the social security number of an arrestee. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include information subject to section 552.130 of the Government Code. Upon review, we find the submitted information does not include a social security number of an arrestee. Thus, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the sheriff determines the requestor is not the child’s legal guardian, then the sheriff must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the sheriff determines the requestor is the child’s legal guardian, then with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we do not address your remaining claimed exceptions.

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, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bs

Ref: ID# 440978

Enc. Submitted documents

c: Requestor
(w/o enclosures)