



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2012

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

OR2012-01586

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# 448100.

The Montgomery County Sheriff's Department (the "sheriff's department") received a request for a specified incident report. You state the sheriff's department will withhold information as permitted by sections 552.130(c) and 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

¹Section 552.130 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See id.* § 552.147(b).

We note the submitted information is subject to section 552.101 of the Government Code.² Section 552.101 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.

...

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

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

Fam. Code § 58.007(c), (e), (j). 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 (defining “delinquent conduct”). 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 at the time of the incident. *See id.* § 51.02(2). The report at issue concerns a thirteen year old who was issued a criminal trespass warning. Thus, we agree the submitted information constitutes a law enforcement record of a juvenile engaged in delinquent conduct after September 1, 1997. Accordingly, the information at issue is generally subject to section 58.007(c).

However, in this instance, the requestor is the parent of one of the juvenile suspects listed in the report. Therefore, this requestor has a right to inspect information concerning her child under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Thus, we will consider the sheriff’s department’s remaining argument against disclosure.

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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation. Based upon your representations and our review, we conclude that release of the information at issue 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 describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, with the exception of the information in Exhibit D you state will be released, the sheriff’s department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

We note Exhibit D contains information concerning a juvenile other than the requestor’s child. Section 58.007(j)(1) of the Family Code requires that personally identifiable information about juvenile suspects, offenders, or witnesses who are not the requestor’s child must be redacted before information is released to a parent. *See id.* § 58.007(j)(1). The sheriff’s department must withhold this information, which we have marked, under

section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

In summary, with the exception of Exhibit D, the sheriff's department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The sheriff's department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information in Exhibit D 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 448100

Enc. Submitted documents

c: Requestor
(w/o enclosures)