



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
Attorney for the City of Farmersville
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-02739

Dear Mr. Griffith:

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# 449912.

The Farmersville Police Department (the "department"), which you represent, received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We note the submitted information is subject to section 552.101 of the Government Code.¹ 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,

¹The 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).

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.

Fam. Code § 58.007(c), (e), (j)(2). 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). We find the submitted information consists of law enforcement records that involve juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, the submitted information is generally subject to section 58.007(c).

However, in this instance, the requestor is the parent of the juvenile offender listed in the report at issue. Therefore, this requestor has a right to inspect information concerning her child under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. 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 your 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 requested information pertains to a pending criminal investigation. Based on your representation and our review of the information, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of a 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, section 552.108(a)(1) applies to the information at issue.

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). 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. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold the submitted 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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 449912

Enc. Submitted documents

c: Requestor
(w/o enclosures)