



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2012

Ms. M. Ann Montgomery-Moran
Assistant Ellis County and District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2012-03447

Dear Ms. Montgomery-Moran:

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# 447464.

The Ennis Police Department (the "department") received a request for information related to a specified incident number. On behalf of the department and your office, you claim the requested 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 information you submitted.

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(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). 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). In this instance, the submitted police report pertains to an incident that occurred after September 1, 1997. Moreover, the incident to which the report pertains would constitute juvenile delinquent conduct if section 58.007(c) is otherwise applicable to the report. *See* Fam. Code § 51.03(a) (defining “delinquent conduct” for purposes of Fam. Code title 3). In this instance, however, the submitted report does not reflect whether either of the offenders involved was a child, for purposes of section 58.007(c), when the incident occurred. *See id.* § 51.02(2)(A) (defining child for purposes of Fam. Code title 3 as a person who is 10 years of age or older and under 17 years of age). Nevertheless, we will rule conditionally. Thus, if either of the offenders listed in the report was a child, as defined by section 51.02(2) of the Family Code, on the date of the incident to which the report pertains, then the report is confidential in its entirety under section 58.007(c) of the Family Code and must be withheld on that basis under section 552.101 of the Government Code. But if neither of the listed offenders was a child, for purposes of section 51.02(2), on the date of the incident, then the report is not confidential under section 58.007(c) and may not be withheld on that basis under section 552.101.

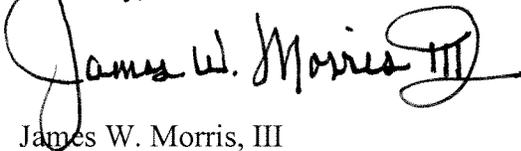
In the event the submitted report is not confidential under section 58.007(c) of the Family Code, we address your claim under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, 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 have marked the information you seek to withhold under section 552.108. You state the marked information is related to a pending case. You assert release of the marked information would interfere with the prosecution of crime. Based on your representation and our review, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *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).

In summary, if either of the offenders listed in the submitted report was a child, as defined by section 51.02(2) of the Family Code, on the date of the incident to which the report pertains, then the department must withhold the entire report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If neither of the listed offenders was a child, for purposes of section 51.02(2), on the date of the incident, then the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code and must release the rest of the report to the requestor. As we are able to make these determinations, we need not address your other arguments against disclosure.

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 that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

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

JWM/em

Ref: ID# 447466

Enc: Submitted documents

c: Requestor
(w/o enclosures)