



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips Suite 100
Conroe, Texas 77301

OR2012-04305

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# 452950 (No. 2012-0945).

The Montgomery County Sheriff's Department (the "department") received a request for information related to a specified incident involving two named individuals. You claim some of the requested 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 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. Section 58.007 of the Family Code 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.

...

(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) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). 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).* Although the submitted information involves two juvenile offenders, so as to be generally confidential under section 58.007(c) of the Family Code, the requestor is a parent of one of the juveniles involved. As such, the requestor has a right to inspect juvenile law enforcement records concerning her child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Section 58.007(j)(2) provides, however, that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claim under section 552.108 of the Government 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 must reasonably explain how and why section 552.108(a)(1) 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

state, and have provided an affidavit signed by an assistant county attorney confirming, the information the department seeks to withhold under section 552.108 is related to a pending criminal prosecution. Based on your representation and affidavit, we conclude section 552.108(a)(1) is generally applicable to the information at issue. *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 present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

We note the information at issue includes a criminal trespass warning. Because a copy of a criminal trespass warning is provided to the person who is the subject of the warning, we find release of the criminal trespass warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the criminal trespass warning may not be withheld under section 552.108.

In this instance, however, the criminal trespass warning contains information that identifies the other juvenile offender. Section 58.007(j) of the Family Code also provides that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). For purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) (“child” means a person who is ten years of age or older and under seventeen years of age). Therefore, the department must withhold the other juvenile offender’s name, social security number, address, and telephone number under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information in the criminal trespass warning must be released. The remaining information encompassed by the department’s claim under section 552.108 of the Government Code may be withheld under section 552.108(a)(1).

In summary, the department (1) must withhold the other juvenile’s name, social security number, address, and telephone number under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code; (2) must release the remaining information in the criminal trespass warning; and (3) may withhold the remaining information encompassed by the department’s claim under section 552.108 of the Government Code under section 552.108(a)(1). The rest of the submitted information must be released.¹

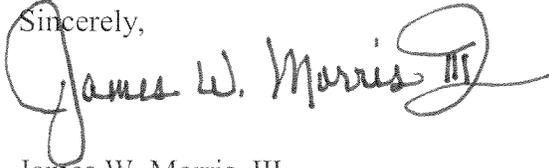
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Because the requestor has a right of access to information the department would be required to withhold from the general public, the department must request another decision if it receives another request for this same information from a different requestor. *See* Gov't Code §§ 552.301(a), .302.

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, looped initial "J" and a distinct "III" at the end.

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

JWM/em

Ref: ID# 452950

Enc: Submitted information

c: Requestor
(w/o enclosures)