



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

Mr. George E. Hyde
Denton, Navarro, Rocha & Bernal
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2012-05223

Dear Mr. Hyde:

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# 450252.

The Groesbeck Police Department (the “department”), which you represent, received a request for twelve specified categories of information, including information pertaining to a named officer, charges against a named individual, and a investigation involving a named individual. We understand the department does not have some of the requested information.¹ You inform us the department is making some of the requested information available to the requestor. You state the department will redact information under sections 552.1175 and 552.130 of the Government Code.² You state the department will also redact access device numbers under section 552.136 of the Government Code and e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).³ You claim the submitted information is excepted from disclosure under

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Under subsection 552.1175(f) of the Government Code, a governmental body may withhold information subject to subsection 552.1175(b) without requesting an opinion from this office. *See* Gov’t Code § 552.1175(f). Section 552.130 allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an access device number under section 552.136 and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to

sections 552.101, 552.102, 552.103, and 552.108 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 public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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). The submitted information contains incident reports involving alleged juvenile delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age), 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 appears to apply. Therefore, the department must withhold this information, which you have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁴

You assert the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure

allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov’t Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

⁴As our ruling is dispositive, we do not address your other arguments to withhold this information.

“[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Generally, 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted a representation from the Limestone County Attorney’s Office objecting to the release of the requested information because it pertains to a pending investigation and prosecution. Based on this representation, we conclude the release of the remaining information 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 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). Therefore, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

To conclude, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold the remaining 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 450252

Enc. Submitted documents

c: Requestor
(w/o enclosures)