



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2012

Ms. Leticia Mendiola
Crime Records Office
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78505-0220

OR2012-06361

Dear Ms. Mendiola:

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# 452353.

The McAllen Police Department (the "department") received a request for case numbers 2011-30898 and 2011-30930. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code.² Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part, as follows:

¹We understand you to raise section 552.101 of the Government Code in conjunction with section 58.106 of the Family Code.

²Although you cite to section 58.106 of the Family Code, we note section 58.007 is the proper exception for your claim.

(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.

Id. § 58.007(c). Thus, under section 58.007(c), law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time the conduct occurred. *See id.* § 51.02(2). Section 58.007(c) does not apply to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find case number 2011-30898 involves juvenile delinquent conduct occurring after September 1, 1997, and is, therefore, subject to section 58.007. None of the exceptions in section 58.007 appear to apply; therefore, case number 2011-30898 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³ However, we find case number 2011-30930 does not involve a suspect or offender who was at least ten and under seventeen years old. Therefore, case number 2011-30930 does not involve a juvenile suspect or offender for purposes of section 58.007. Accordingly, the department may not withhold case number 2011-30930 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(1) of the Government Code exempts 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 claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex*

³As our ruling is dispositive for case number 2011-30898, we need not address your argument against disclosure for this information.

parte Pruitt, 551 S.W.2d 706 (Tex. 1977). You state case number 2011-30930 relates to a pending criminal prosecution. Based on your representations and our review, we find that release of case number 2011-30930 would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to case number 2011-30930. 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).

However, section 552.108 does not except 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold case number 2011-30930 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold case number 2011-30898 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, which must be released, the department may withhold case number 2011-30930 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 452353

Enc. Submitted documents

c: Requestor
(w/o enclosures)