



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2012

Mr. Steven Haas
Records Coordinator
Burleson Police Department
225 West Renfro
Burleson, Texas 76028-4261

OR2012-09928

Dear Mr. Haas:

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# 457456 (Burleson ORR Nos. 297 and 335).

The Burleson Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident report. You claim 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 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 protected by other statutes, including section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant 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 [the Act], or other law.

Id. § 58.007(c), (e), (j). 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 reported conduct. *See id.* § 51.02(2). Upon review, we agree the submitted documents involve juvenile delinquent conduct occurring after September 1, 1997. Therefore, the submitted information is subject to section 58.007. With regard to the second requestor, it does not appear that any of the exceptions in section 58.007 apply. Therefore, the submitted information must be withheld in its entirety from the second requestor under section 552.101 in conjunction with section 58.007(c) of the Family Code.¹

We note, however, the first requestor is the step-parent of the juvenile suspect listed in the submitted report and, thus, may be the parent or guardian of the juvenile suspect. Accordingly, if the first requestor is not a parent or guardian of the listed juvenile suspect,

¹Because our ruling regarding the second request is dispositive, we do not address your argument under section 552.108 for the second request.

then the department must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the first requestor is a parent or guardian of the juvenile suspect, the department may not withhold the submitted information from the first requestor on the basis of section 58.007(c) of the Family Code. *See id.* § 58.007(e). We note that, before the parent or guardian of a juvenile suspect may inspect the information, the department must redact personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses pursuant to section 58.007(j)(1), and the department must withhold information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j). Accordingly, we will address your claim under section 552.108 of the Government Code for the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is generally applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).*

You state the submitted information pertains to an ongoing criminal prosecution pending with the Johnson County Attorney’s Office (the “county attorney’s office”), and the county attorney’s office objects to disclosure of the submitted information because its release would interfere with the pending criminal prosecution. Based upon your representations and our review, we find section 552.108(a)(1) is generally applicable to the submitted information. *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 from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, the identification and description of the complainant and a detailed description of the offense, but does not include identifying information of a witness or of a victim, unless the victim is also the complainant. *See id.* at 3-4. Thus, with the exception of the basic information, the department may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code. However, as previously noted, section 58.007(j)(1) of the Family Code states personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be withheld. *See Fam. Code § 58.007(j)(1)*. Accordingly, in releasing basic information to the first requestor, the

department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

In summary, the submitted information must be withheld in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Government Code. If the first requestor is not a parent or guardian of the listed juvenile suspect, then the department must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the first requestor is a parent or guardian of the listed juvenile suspect, then, with the exception of basic information, the department may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code. However, in releasing the basic information to the first requestor, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 457456

Enc. Submitted documents

c: Requestor
(w/o enclosures)