



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2012

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-12777

Dear Ms. Pemberton:

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# 462177 (#W008197).

The Killeen Police Department (the "department") received a request for records related to the requestor's son during a specified time period. You state you have released some information. You claim that the submitted 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. This exception encompasses information that 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[.]

Fam. Code § 58.007(c), (e), (j)(1). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). 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).

Report numbers 11-007549, 11-015077, 12-002999, 12-005373, and 12-006732 involve children engaged in delinquent conduct or in need of supervision after September 1, 1997. As such, this information is subject to section 58.007(c). However, you state, and the information at issue indicates, the requestor is the parent of one of the juveniles allegedly engaged in delinquent conduct or in need of supervision. Therefore, in accordance with section 58.007(e), the requestor has a right to inspect information concerning her child, and the department may not use section 58.007(c) to withhold report numbers 11-007549, 11-015077, 12-002999, 12-005373, and 12-006732 from this requestor. *See id.* § 58.007(e).

However, section 58.007(j)(1) provides that before a parent may inspect juvenile law enforcement records, any personally identifiable information concerning juvenile suspects, offenders, victims, or witnesses other than the parent's child must be redacted. *See id.* § 58.007(j)(1). We have marked the identifying information of a juvenile victim that must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. We are unable to determine the ages of the remaining suspects, offenders, victims, or witnesses in the remaining information. Thus, we must rule conditionally. To the extent the identifying information we have marked pertains to a suspect, offender, victim, or witness who was ten years of age or older and under seventeen years of age at the time of the reported conduct, this information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. To the extent the marked information does not pertain to a juvenile suspect, offender, victim, or witness who was ten years of age or older and under seventeen years of age at the time of the reported conduct, the marked information may not be withheld under section 552.101 in conjunction with section 58.007(j). The remaining information in report numbers 11-007549, 11-015077, 12-002999, 12-005373, and 12-006732 must be released to this requestor.

You seek to withhold report number 11-003562 from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state report number 11-003562 pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue. As you acknowledge, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic offense information, which you state you have released, the department may withhold report number 11-003562 under section 552.108(a)(2) of the Government Code.

In summary, to the extent the identifying information we have marked pertains to a juvenile suspect, offender, victim, or witness who was ten years of age or older and under seventeen

years of age at the time of the reported conduct, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information in report numbers 11-007549, 11-015077, 12-002999, 12-005373, and 12-006732 must be released to this requestor.¹ With the exception of the basic offense information, which you state you have released, the department may withhold report number 11-003562 under section 552.108(a)(2) 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/som

Ref: ID# 462177

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. See Family Code § 58.007(e); Gov't Code § 552.023.