



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

Mr. Jeffrey L. Moore
Attorney for City of Ferris
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-14805

Dear Mr. Moore:

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# 469854.

The Ferris Police Department (the "department"), which you represent, received a request for the department's policies and procedures for patrol, citations and reports issued by a named officer during a specified time period, and audio or video recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We first note you have not submitted the requested department policies and procedures. To the extent this information existed on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section

encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(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.

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

supervision”). 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 incident. *See id.* § 51.02(2). We agree the submitted citations and video recording consist of law enforcement records that involve juvenile conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, the citations and video recording are generally subject to section 58.007(c).

However, in this instance, the requestor is an attorney representing one of the juvenile offenders at issue. Therefore, this requestor has a right to inspect the information at issue under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold the information at issue from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, personally identifiable information concerning any juvenile suspect, offender, victim, or witness who is not the requestor’s client must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Further, section 58.007(j)(2) further provides that information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Thus, we will consider your remaining arguments against disclosure.

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 release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to pending criminal investigations. Based on your representation and our review of the information, we conclude release of the information at issue 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 describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) generally applies to the submitted information. However, the department provided copies of the submitted citations to the individuals cited. You have not explained how release of the citations, which have already been seen by the cited individuals, would interfere with the detection, investigation, or prosecution of crime. Therefore, the citations may not be withheld under section 552.108(a)(1).

In addition, 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). 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. We note basic information does not include motor vehicle record

information protected by section 552.130 of the Government Code. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information and the citations, the department may withhold the submitted information under section 552.108(a)(1). As noted above, personally identifiable information concerning any juvenile suspect, offender, victim, or witness who is not the requestor's client must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See* Fam. Code § 58.007(j)(1). Therefore, the department must withhold the identifying information we have marked in the submitted citations under section 58.007(j)(1).

You raise section 552.130 of the Government Code for portions of the remaining information in the submitted citations. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). We note section 552.130 protects personal privacy. Thus, the requestor has a special right of access to her client's private information. *See id.* § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the department may not withhold the motor vehicle record information pertaining to the requestor's client under section 552.130. However, the department must withhold the remaining information you have marked in the submitted citations under section 552.130.

In summary, with the exception of basic information and the submitted citations, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the submitted citations under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. With the exception of information pertaining to the requestor's client, the department must withhold the information you have marked in the submitted citations under section 552.130 of the Government Code. Basic information for report number 201200420 and the remaining information in the citations must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 469854

Enc. Submitted documents

c: Requestor
(w/o enclosures)