



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 24, 2012

Ms. Rachel Lindsay  
Counsel for City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-17032

Dear Ms. Lindsay:

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# 471611 (McKinney ORR #10-6018).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to two specified incidents involving a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 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). 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 note the submitted information involves juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. We note the requestor may be the parent of one of the juvenile offenders listed in the reports. If the requestor is not the parent of one of the juvenile offenders listed in the reports, then the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c). However, to the extent the requestor is a parent of the juvenile offender, he may inspect or copy any law enforcement records concerning the juvenile under section 58.007(e). *Id.* § 58.007(e). We note, however, personally identifiable information concerning any juvenile suspect, offender, victim, or witness who is not the requestor's child 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) 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). Accordingly, we will address your argument under section 552.108 of the Government Code.

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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state case #11-000312 relates to an open and pending criminal investigation. Based on your representation and our review, we find release of case #11-000312 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, we conclude section 552.108(a)(1) is applicable to case #11-000312.

You assert case #11-000069 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). You state case #11-000069 pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to case #11-000069.

We note, 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 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the submitted information under section 552.108 of the Government Code. However, in releasing basic information, the department must hold the personally identifiable information pertaining to the juveniles who are not the requestor’s child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. *See Fam. Code* § 58.007(j)(1).

In summary, if the requestor is not a parent of one of the juvenile offenders listed in the reports, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family

Code. If the requestor is a parent of one of the juvenile offenders listed in the reports, then, with the exception of basic information, the department may withhold case #11-000312 under section 552.108(a)(1) of the Government Code and case #11-000069 under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must redact the identifying information of the juveniles who are not the requestor's child pursuant to 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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/eb

Ref: ID# 471611

Enc. Submitted documents

c: Requestor  
(w/o enclosures)