



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2012

Mr. Steven Meyer
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2012-17511

Dear Mr. Meyer:

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# 474104 (Reference No. 9206-100212).

The Arlington Police Department (the "department") received a request for information related to a specified offense involving a named individual, including the search warrant, the search warrant affidavit, the arrest warrant, the arrest warrant affidavit, and any arrest report. You claim 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 information you submitted.

We note the submitted information does not include a search warrant, a search warrant affidavit, an arrest warrant, an arrest warrant affidavit, or an arrest report. We therefore assume the department has released those types of information, to the extent they existed when the department received the present request for information. If not, then any such information must be released immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We also note section 552.101 of the Government Code is applicable in this instance.² 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 exception encompasses information made confidential by other statutes. 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:

...

(2) any information that is excepted from required disclosure under [the Act] or other law.

²This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Fam. Code § 58.007(c), (e), (j)(2); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code title 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code title 3). The submitted information involves a juvenile offender, so as to be generally confidential under section 58.007(c). In this instance, however, the requestor is the juvenile’s attorney. As such, the requestor has a right to inspect juvenile law enforcement records concerning his client pursuant to section 58.007(e). *See id.* § 58.007(e). Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2).

Although you seek to withhold the submitted information under section 552.108 of the Government Code, we note the requestor specifically seeks access to “[t]he basic offense and arrest information[.]” Section 552.108 does not except from public 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 offense and arrest 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* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, the department must release basic information in accordance with section 552.108(c), including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. As the requestor does not seek access to the rest of the submitted information, it is not responsive to his request. Therefore, this decision does not address the public availability of the remaining information, which need not be released in response to the request.³

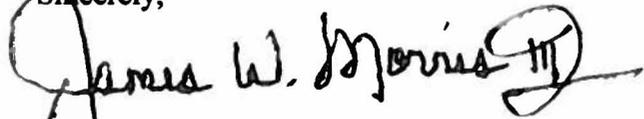
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³We note this requestor has a right of access to information the department would be required to withhold from the general public. Should the department receive another request for this same information from a different requestor, the department should resubmit this information and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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 black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 474104

Enc: Submitted documents

c: Requestor
(w/o enclosures)