ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2013

Mr. Matthew B. Cross
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-05791

Dear Mr. Cross:

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# 488924.

The El Paso Police Department (the "department") received a request for information pertaining to a specified case number. You claim 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. Section 552.101 encompasses information that 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). 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;
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> (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
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> (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.
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> . . .
>
> (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.
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> . . .
>
> (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:
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> . . .
>
> (2) any information that is excepted from required disclosure under [the Act] or other law.

Id. § 58.007(c), (e), (j)(2). Upon review, we find the submitted report involves a juvenile runaway. Thus, this information involves a juvenile engaged in conduct indicating a need for supervision and is subject to section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). However, it appears that the requestor may be a parent of the juvenile runaway in the submitted report. Under section 58.007(e), a child's parent has a right to inspect or copy law enforcement records concerning her own child. *See id.* § 58.007(e). Accordingly, if the requestor is not the parent of the juvenile runaway, then the department must withhold the submitted report 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 requestor is a parent of the juvenile runaway, the requestor has a right to inspect law enforcement records concerning her child under section 58.007(e). *See id.*

Section 58.007(j), however, provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claim 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is 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). You state the submitted information relates to a pending criminal investigation. Based on your representation and our review, we conclude release of the submitted report would interfere with the detection, investigation, or prosecution of a 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 curium*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted report.

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*). Thus, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(1).[1]

In summary, if the requestor is not a parent of the juvenile runaway listed in the submitted report, then the department must withhold the submitted report 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 the juvenile runaway, with the exception of basic information, which the department must release, the department may withhold the submitted report under section 552.108(a)(1) 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

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[1]We note that if the requestor is a parent of the juvenile offender in this instance, the requestor has a special right of access to the information being released. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 488924

Enc. Submitted documents

c: Requestor
(w/o enclosures)