



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-12550

Dear Mr. Batoon:

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# 498396.

The El Paso Police Department (the "department") received two requests for case number 13-157216. You claim the requested 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;

(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.

Id. § 58.007(c), (e), (j)(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we agree the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, this information is confidential under section 58.007(c).

We note the second requestor is not a parent or guardian of the juvenile offender. Therefore, as it does not appear any of the exceptions in section 58.007 apply, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, the first requestor is a parent of the juvenile offender listed in the submitted information. Therefore, this requestor has a right to inspect or copy information concerning

her child under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *See id.* We note, however, 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 the child's parent or guardian may inspect or copy a record or file concerning the child. *Id.* § 58.007(j)(2). Accordingly, we will address the department's 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 or prosecution. Based on your representation and our review, we find 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).

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, which must be released to this requestor, the department may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code, except for basic information, which must be released to the first requestor.¹

¹We note the first 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 498396

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)