



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2013

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, Sixth Floor  
College Station, Texas 77840-7896

OR2013-14729

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# 501702 (TAMU 13-414).

Texas A&M University (the "university") received a request for a specified police report. The university claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 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"). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, this information is confidential under section 58.007(c).

However, the requestor is a parent of the juvenile offender listed in the submitted information. Therefore, the requestor has a right to inspect or copy information concerning her child under section 58.007(e). *Id.* § 58.007(e). Accordingly, the university may not withhold the submitted information from the 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 university's claims under sections 552.103 and 552.108 of the Government Code.

The university seeks to withhold the marked portions of the submitted information under section 552.108(a)(1) of the Government Code. This section 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, .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note the information at issue includes a criminal trespass warning. Because a copy of the warning was provided to the person who is the subject of the warning, we find release of the warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the university may not withhold the criminal trespass warning under section 552.108.

You state, and provide documentation from the Brazos County Attorney's Office (the "county attorney") representing, that the information at issue relates to a criminal case pending prosecution by the county attorney and release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Based on these representations, we find you have demonstrated the 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 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, with the exception of the criminal trespass warning, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You also claim the criminal trespass warning is excepted under section 552.103 of the Government Code, which provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. *See* Open Records Decision No. 551 at 4-5. Thus, any information obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Upon review, we find the criminal trespass warning has been provided to the individual cited. Accordingly, the university may not withhold this information under section 552.103 of the Government Code.

In summary, with the exception of the criminal trespass warning, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The university must release the remaining information.<sup>2</sup>

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/>

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<sup>2</sup>We note 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 university receives another request for this information from a different requestor, the university must again seek a ruling from this office.

[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# 501702

Enc. Submitted documents

c: Requestor  
(w/o enclosures)