



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2014

Mr. Jeffrey W. Giles
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-06936

Dear Mr. Giles:

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# 520961 (GC No. 21177).

The Houston Fire Department (the "department") received a request for a specified report. You claim that the submitted information is excepted from disclosure pursuant to 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that

occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portions of section 58.007 provide the following:

(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.

Id. § 58.007(c), (e). 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 find the submitted information constitutes law enforcement records of a child engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of section 58.007 of the Family Code); *see also* Open Records Decision No. 127 at 8 (1976) (finding arson investigation division of fire department is a law enforcement agency). Thus, the submitted information is subject to section 58.007.

We note the requestor may be the guardian of the juvenile listed in the submitted report. As we are unable to make this determination, we must rule conditionally. If the requestor is not the guardian of the juvenile offender in the report, then the department must withhold the 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 the guardian of the juvenile

offender, the department may not withhold the submitted information from this requestor on the basis of section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides before a parent or guardian of a juvenile suspect may inspect the information, the department must withhold information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.108(a)(2) 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... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the submitted information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the submitted information should you find the requestor has a right of access to this report under section 58.007(e) of the Family Code.

We note basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the 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). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, if the department determines the requestor is not a guardian of the juvenile offender, 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. Should you find the requestor is the guardian of the juvenile offender and has a right of access to this report under section 58.007(e), the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code. However, basic information must be released.

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,

A handwritten signature in black ink, appearing to read 'Debbie K. Lee', with a stylized flourish at the end.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/som

Ref: ID# 520961

Enc. Submitted documents

c: Requestor
(w/o enclosures)