



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2014

Mr. Richard L. Bilbie
Interim City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2014-11180

Dear Mr. Bilbie:

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# 528383.

The Harlingen Police Department (the "department") received a request for a specified case number. You claim 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides, in pertinent 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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). 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 conduct at issue. *See id.* § 51.02(2). The submitted information involves allegations of delinquent conduct that occurred after September 1, 1997. One of the offenders is a child for the purposes of section 58.007. *See id.* However, we are unable to determine the age of the other offender. Additionally, we note the requestor is a parent of this individual. Accordingly, we must rule conditionally. If the requestor's child was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the requestor does not have access to the report and it must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c). If, however, the requestor's child was ten years of age or older and under seventeen years of age at the time of the conduct at issue, in accordance with section 58.007(e), the department may not use section 58.007(c) to withhold this information from this requestor. *See id.* § 58.007(e). However, section 58.007(j)(1) provides that any identifiable information about a juvenile suspect or offender who is not the requestor's child must be redacted. *Id.* § 58.007(j)(1). Thus, the department must withhold the identifying information of the juvenile offender who is not the

requestor's child under section 552.101 in conjunction with section 58.007(j)(1). Additionally, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will consider your remaining arguments for this information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation by the department. Based upon your representation and our review, we conclude release of the submitted information 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note, however, section 552.108 of the Government Code 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*, and includes, among other items, the name and address of the arrested person. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the submitted information under section 552.108(a)(1).¹

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The doctrine of common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

In this instance, you seek to withhold the remaining information under common-law privacy. However, the requestor has a right of access to her own child's private information pursuant to section 552.023 of the Government Code. Gov't Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the department may not withhold the information pertaining to the requestor's child under section 552.101 in conjunction with common-law privacy. Additionally, you have not demonstrated any of the remaining information pertaining to individuals other than the requestor's child is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

In summary, if the requestor's child was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted information must be withheld 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's child was ten years of age or older and under seventeen years of age at the time of the conduct at issue, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the identifying information of the juvenile offender who is not the requestor's child, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family 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 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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 528383

Enc. Submitted documents

c: Requestor
(w/o enclosures)