



November 8, 2002

Mr. Loren B. Smith
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR2002-6374

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171968.

The City of Friendswood (the “city”), which you represent, received a written request for all records pertaining to the requestor’s minor daughter. You state that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

You first contend that the police records you submitted as Exhibit A are excepted from public disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . 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.” You inform us that the records you submitted to this office as Exhibit A pertain to criminal investigations that did not result in a conviction or deferred adjudication. After reviewing the information at issue, we conclude that the city may withhold most of Exhibit A pursuant to section 552.108(a)(2) of the Government Code.

Section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Consequently, the city must release these types of information in accordance with *Houston Chronicle Publishing Company 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).¹

¹Because we resolve your request under section 552.108(a)(2), we need not address the applicability of the other exceptions you raised.

You next contend that the records you submitted to this office as Exhibit B are made confidential under section 58.007 of the Family Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.² Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Subsection 58.007(d) authorizes the release of certain juvenile law-enforcement records to the Texas Youth Commission and the Texas Department of Criminal Justice, and thus is inapplicable here. *See also* Fam. Code § 58.007(e) (authorizing release of juvenile law-enforcement records to other juvenile justice agency or criminal justice agency). Section 58.007(c) does not grant the law-enforcement officials controlling juvenile records discretion as to who else may see them. This is in contrast to section 58.007(b), which allows “with leave of the juvenile court” inspection of juvenile court records by any person “with a legitimate interest.” *See* Fam. Code § 58.007(b). Because section 58.007 does not authorize the release of the juvenile law-enforcement records in this instance, we conclude that the city must withhold these records in their entirety.³ *See* Open Records Decision No. 181 (1977).

²Section of the Government Code 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by other statutes.

³Please note, however, that in Open Records Decision No. 628 (1994), this office discussed the applicability of the statutory predecessor to section 58.007(c) of the Family Code to records involving child crime victims:

This section applies only to juvenile offenders and not to juvenile crime victims. Section 51.14 [of the Family Code] provides, *inter alia*, that where a particular matter is within the jurisdiction of a juvenile court, the juvenile offender’s records shall be confidential. [Citation omitted.] These provisions have no bearing on records relating to juvenile crime victims; they clearly apply only to records concerning juvenile offenders. Although the provisions express concern for the privacy of juvenile offenders, juvenile crime victims have thus far received no similar explicit statutory protection.

Open Records Decision No. 628 at 6 (1994).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/lmt

Ref: ID# 171968

Enc: Submitted documents

c: Ms. Lissa Brousseau
302 Pine Creek Drive
Friendswood, Texas 77546
(w/o enclosures)