ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2005

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2005-09532

Dear Ms. Obinegbo:

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# 234601.

The Richardson Police Department (the "department") received a request for information relating to a named individual and a specified time interval, including arrest records, police reports, offense records, court records, medical records, testimony, and the requestor's signatures. You indicate that the department is not in possession of any responsive court records.[1] You state that the department has released some of the requested information. You claim that other information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We assume that the department has released any other types of information that are responsive to this request, to the extent that such information existed when the department received this request. If not, then the department must release any such information immediately. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

[1]We note that the Act does not require the department to release information that did not exist when it received this request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that some of the submitted documents are not responsive to this request for information. The present request is for records relating to the time period between January 1, 2001, and August 28, 2002. The submitted records that do not fall within that time period are not responsive to the request. We have marked the non-responsive documents. This decision does not address the public availability of the non-responsive documents, and they need not be released.

Next, we consider your claims with respect to the responsive information that you have submitted. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either confidential, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in 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 Subchapter B.

Fam. Code § 58.007(c); *see also id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of Fam. Code tit. 3). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We conclude that the department must withhold report numbers 01-15363 and 01-20168 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108 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). 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 that it seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. Based on your representations, we find that section 552.108(a)(2) is applicable to report numbers 02-52912 and 02-59783.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the information in report numbers 02-52912 and 02-59783 under section 552.108(a)(2).

In summary: (1) the department must withhold report numbers 01-15363 and 01-20168 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; and (2) except for the basic information that must be released under section 552.108(c), the department may withhold report numbers 02-52912 and 02-59783 under section 552.108(a)(2).[2] As we are able to make these determinations, we do not address your other arguments against disclosure.

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

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[2]We note that the department would ordinarily be required to withhold some of the information that is subject to section 552.108(c) for the purpose of protecting the requestor's common law privacy interests. *See* Gov't Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In this instance, however, the requestor has a right of access to his own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the department receive another request for these same records from a person who would not have a right of access to the private information, the department should resubmit these same records and request another decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001).

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).

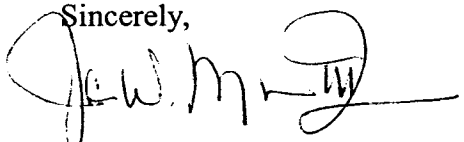
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 234601

Enc: Submitted documents

c: Mr. Stephen Floyd
416 Royal Crest
Richardson, Texas 75081
(w/o enclosures)