ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2006

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria - Legal Department
P. O. Box 1758
Victoria, Texas 77902-1758

OR2006-08165

Dear Mr. Risley:

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# 255180.

The City of Victoria (the "city") received a request for police reports and calls involving two named individuals at a specific address during a certain time period. You state that you have released some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that police report numbers 2006-4076, 2006-4087, 2006-6906, 2006-7114, 2006-8355, and 2006-20439 are subject to section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses 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. Section 58.007(c) provides 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 Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2)(A). Upon review, we find that police report numbers 2006-4076, 2006-4087, 2006-6906, 2006-7114, 2006-8355, and 2006-20439 involve a juvenile suspect and concern conduct that occurred after September 1, 1997. Additionally, we find that incident report numbers 2006-8847 and 2006-6946 are also subject to section 58.007. Accordingly, the city must withhold police report numbers 2006-4076, 2006-4087, 2006-6906, 2006-7114, 2006-8355, and 2006-20439[1], and incident report numbers 2006-8847 and 2006-6946 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also claim that incident report numbers 2006-19509, 2006-12296, 2006-7989, and 2006-6694 are subject to section 261.201 of the Family Code. Section 552.101 also encompasses section 261.201 of the Family Code, which provides in pertinent part as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
> >
> > (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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[1]As our ruling under section 58.007 of the Family Code is dispositive, we need not address your argument under section 552.108 of the Government Code for report number 2006-20439.

Fam. Code § 261.201(a). Upon review of the incident reports at issue, we find you have not demonstrated that the incident reports pertain to a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code or were used or developed in an investigation under chapter 261 of the Family Code. Therefore, none of the incident reports are subject to section 261.201, and they may not be withheld under section 552.101 on that basis.

Finally, you claim that a portion of police report number 2006-19761 may be withheld under section 552.108 of the Government Code, which 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." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted police report relates to a pending criminal investigation. Based on this representation, we conclude that the release of the police report 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which includes a detailed description of the offense, you may withhold pages two through four of police report number 2006-19761 under section 552.108(a)(1).

In summary, the city must withhold police report numbers 2006-4076, 2006-4087, 2006-6906, 2006-7114, 2006-8355, and 2006-20439, and incident report numbers 2006-8847 and 2006-6946 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which includes a detailed description of the offense, you may withhold pages two through four of police report number 2006-19761 under section 552.108(a)(1). The remaining information must be released.

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, 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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255180

Enc. Submitted documents

c: Mr. Edward Gonzales
212 Sam Houston #216
Victoria, Texas 77901
(w/o enclosures)