



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

Mr. Nghiem V. Doan
Deputy City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2006-11641

Dear Mr. Doan:

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# 265188.

The City of Pearland (the "city") received a request for eighteen offense reports and a videotape and transcript of the traffic stop related to a specified citation. You claim that the requested information is excepted from disclosure under section 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city has not submitted offense reports 06-6577 and 06-9190. Thus, to the extent these reports existed when the city received the request, they have been released to the requestor. If not, you must release them immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

Next, we note that portions of the submitted information identify juvenile suspects. Section 552.101 of the Government Code excepts "information considered to be confidential

by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 58.007 of the Family Code. Section 58.007(c) applies to juvenile conduct that occurred after September 1, 1997 and provides in relevant 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). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. Section 58.007 applies to delinquent conduct as well as conduct indicating a need for supervision. *See* Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). After reviewing the submitted information, we conclude that Exhibits B, O, and P involve juvenile conduct that occurred after September 1, 1997. Accordingly, Exhibits B, O, and P are confidential under section 58.007 of the Family Code, and must be withheld pursuant to section 552.101 of the Government Code as information made confidential by law.

You claim that Exhibits C, D, E, F, G, H, I, J, K, L, M, N, and Q are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that these exhibits relate to cases that concluded in a result other than conviction or deferred

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to Exhibits C, D, E, F, G, H, I, J, K, L, M, N, and Q .

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of basic information, the city may withhold Exhibits C, D, E, F, G, H, I, J, K, L, M, N, and Q under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information in Exhibits C, D, E, F, G, H, I, J, K, L, M, N, and Q that is not otherwise confidential by law. Gov't Code § 552.007.

We next address your claim that Exhibit R is excepted from disclosure under section 552.119 of the Government Code. Section 552.119 provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer.² After review of your arguments, we find you have not demonstrated, nor is it apparent from our review of the submitted information, that release of Exhibit R would endanger the life or physical safety of the peace officers depicted; therefore the city may not withhold Exhibit R pursuant to section 552.119 of the Government Code.

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

We note the Exhibit R contains information excepted from disclosure by section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The city must withhold the Texas license plate numbers in the submitted video pursuant to section 552.130.

In summary, the city must withhold Exhibits B, O, and P under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Other than basic information, the city may withhold Exhibits C, D, E, F, G, H, I, J, K, L, M, N, and Q under section 552.108(a)(2) of the Government Code. The city must redact the Texas license plate numbers from Exhibit R under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/vh

Ref: ID# 265188

Enc. Submitted documents

c: Mr. Doug Bacon
3519 Boxwood Gate Trail
Pearland, Texas 77581
(w/o enclosures)