



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2007-02646

Dear Ms. Chang:

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# 273234.

The Houston Police Department (the "department") received a request for F.A.S.T. Team records involving a specific address and a specified time interval. You have submitted information that the department seeks to withhold under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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 exception encompasses information that other statutes make 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). 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, 75<sup>th</sup> 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 title 3 of Family Code). 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. You contend that one of the submitted police reports is confidential under section 58.007(c). We conclude that Exhibit 3 involves a juvenile offender and must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Although you contend that section 58.007 also is applicable to Exhibit 2, that information does not involve a juvenile offender. We therefore also conclude that the department may not withhold any of the information in Exhibit 2 under section 552.101 in conjunction with section 58.007 of the Family Code.

You also raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend that the information submitted as Exhibit 4 is confidential under section 261.201(a). Because the information in question consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, we agree that it falls within the scope of the statute. As you do not indicate that the department has adopted a rule that governs the release of this

type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). 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 at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information submitted as Exhibit 2 is related to a criminal investigation that is inactive pending additional leads. You also inform us, however, that the statute of limitations has not run and the investigation may be reactivated once additional leads are developed. You contend that the release of Exhibit 2 would interfere with the detection and investigation of crime. Based on your arguments, we conclude that section 552.108(a)(1) is applicable to Exhibit 2. 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).

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*. See 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information in Exhibit 2 under section 552.108(a)(1).

In summary: (1) the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) the department must withhold Exhibit 4 under section 552.101 in conjunction with section 261.201 of the Family Code; and (3) the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). As we are able to make these determinations, we need 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 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).

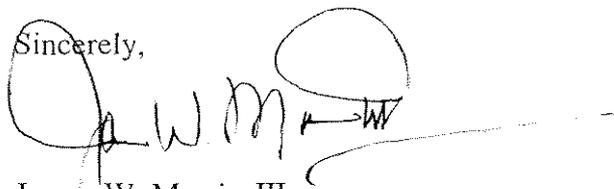
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'JWM', with a large, stylized flourish extending to the right.

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

JWM/jb

Ref: ID# 273234

Enc: Submitted documents

c: Ms. Mimi Roman  
Edmondson & Associates, LLC  
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(w/o enclosures)