



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 26, 2007

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2007-08046

Dear Mr. Gambrell:

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# 281968.

The Houston Police Department (the "department") received a request for seven specified incident reports and for the incident reports and call slips generated for a particular location on specified dates. You state you have released some responsive information, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note that some of the requested information in the present request was the subject of a prior ruling of this office. On September 13, 2006, this office issued Open Records Letter No. 2006-10648 (2006), in which we ruled that the information at issue was excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and section 552.108 of the Government Code. You state that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the department may continue to rely on our ruling in Open Records Letter No. 2006-10648 with respect to any information requested in that ruling that is also at issue here. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the

precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We will now address your arguments for the remaining submitted information.

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. Section 552.101 encompasses information protected by other statutes, such as 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. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007(c) reads 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.

*Id.* § 58.007(c). We note, however, that section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.; see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes section 58.007). Upon review, we find that Exhibits 6 and 7 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Accordingly, we find that Exhibits 6 and 7 are confidential pursuant to section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, Exhibit 5 does not identify a juvenile suspect or offender. Therefore, this report is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis.

Section 552.108(a)(1) 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 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that Exhibits 2 and 3 pertain to criminal investigations that are inactive pending additional leads. You also state that the statute of limitations has not run. However, we note that Exhibit 2 relates to alleged criminal mischief that occurred on June 20, 2003 and the longest possible statute of limitations for this report is two years. *See* Penal Code § 20.03(b)(2), (3) (criminal mischief causing pecuniary loss of \$50 or more but less than \$1,500 is misdemeanor), Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). We also note that Exhibit 3 relates to an alleged criminal trespass that occurred on June 4, 2003. The statute of limitations for this offense is two years from the date of the commission of the offense. *See* Penal Code § 30.05(d)(2), (3) (criminal trespass is either a Class A, B, or C misdemeanor), Crim. Proc. Code art. 12.02. Thus, Exhibits 2 and 3 relate to alleged offenses for which the statute of limitations has run. You have neither informed this office that any criminal charges were filed within the limitations period nor have you explained how release of the information would interfere with the detection, investigation, or prosecution of offenses for which the statutes of limitations has run. Thus, the department has not established the applicability of section 552.108(a)(1) to Exhibits 2 and 3.

You also contend that Exhibits 4 and 5 relate to concluded criminal cases excepted from disclosure under section 552.108(a)(2) of the Government Code. This section excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) 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. In this instance, you state that Exhibits 4 and 5 pertain to closed investigations that did not result in a conviction or deferred adjudication. Based upon your representations and our review, we agree that 552.108(a)(2) is applicable to Exhibits 4 and 5.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No.127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold from disclosure Exhibits 4 and 5 under section 552.108(a)(2).

Section 552.130 of the Government Code 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. Thus, the department must withhold the Texas motor-vehicle record information we have marked in the remaining submitted documents under section 552.130.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We thus agree that the department may withhold the social security numbers we have marked under section 552.147.<sup>1</sup>

In summary, the department may continue to rely on our ruling in Open Records Letter No. 2006-10648 with respect to any information requested in that ruling that is also at issue here. The department must withhold Exhibits 6 and 7 under section 552.101 in conjunction with section 58.007 of the Family Code. With the exception of basic information that must be released, Exhibits 4 and 5 may be withheld under section 552.108(a)(2) of the Government Code. The department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The marked social security numbers may be withheld under section 552.147 of the Government Code. 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

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/eeg

Ref: ID# 281968

Enc. Submitted documents

c: Mr. Todd Ward  
DeGuerin Dickson & Hennessy  
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(w/o enclosures)