



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2008

Mr. Jeffery C. Lewis
General Counsel
Atchley, Russel, Waldrop & Hlavinka, L.L.P.
P.O. Box 5517
Texarkana, Texas 75505-5517

OR2008-05958

Dear Mr. Lewis:

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# 308860.

The Texarkana Independent School District (the "district"), which you represent, received a request for information pertaining to two specified incidents and the access log to the school file of the requestor's child. You state that the district has released the access log to the requestor. You claim that a portion of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1325, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, 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). Section 58.007 provides in pertinent part 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). We have reviewed the submitted information and find that it involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this information is subject to section 58.007(c). We note, however, that the requestor is the mother of the juvenile arrestee at issue in the submitted information. Under section 58.007(e), the requestor may inspect or copy law enforcement records concerning her own child. *Id.* § 58.007(e). However, any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007 (j)(1). Section 58.007(j) also states that information subject to any

other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your claims under section 552.108 of the Government Code.

Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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)(1)-(2). We note that section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal case. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d177 (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(a)(2) is applicable only if the information at issue relates to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. 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* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you state that portions of documents 1, 2, 3, 7, 10, 11, and 13, as well as documents A through K and O through S relate to a pending criminal investigation. You further state that release of this information would interfere with the detection, investigation, or prosecution of a crime. Upon review, we conclude that section 552.108(a)(1) is applicable to the portions of documents 1, 2, 3, 7, 10, 11, and 13 that you have marked, as well as documents A through K and O through S. You further state that documents L, M, and N pertain to a criminal case that concluded in a final result other than conviction or deferred adjudication. Upon review, we conclude that section 552.108(a)(2) is applicable to documents L, M, and N.

In summary, any personally identifiable information concerning a juvenile suspect, offender, victim, or witness, other than the requestor's child, must be redacted pursuant to section 58.007(j)(1) of the Family Code. The district may withhold the portions of documents 1, 2, 3, 7, 10, 11, and 13 that you have marked, as well as documents A through K and O through S pursuant to section 552.108(a)(1) of the Government Code. The

department may withhold documents L, M, and N pursuant to section 552.108(a)(2) of the Government Code.¹ The rest of the submitted information must be released to this requestor pursuant to section 58.007(e) of the Family Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

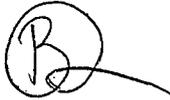
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

¹As our ruling on this information is dispositive, we do not address your remaining arguments.

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, consisting of a stylized capital letter 'B' enclosed within a circle, with a horizontal line extending to the right from the bottom of the circle.

Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 308860

Enc. Submitted documents